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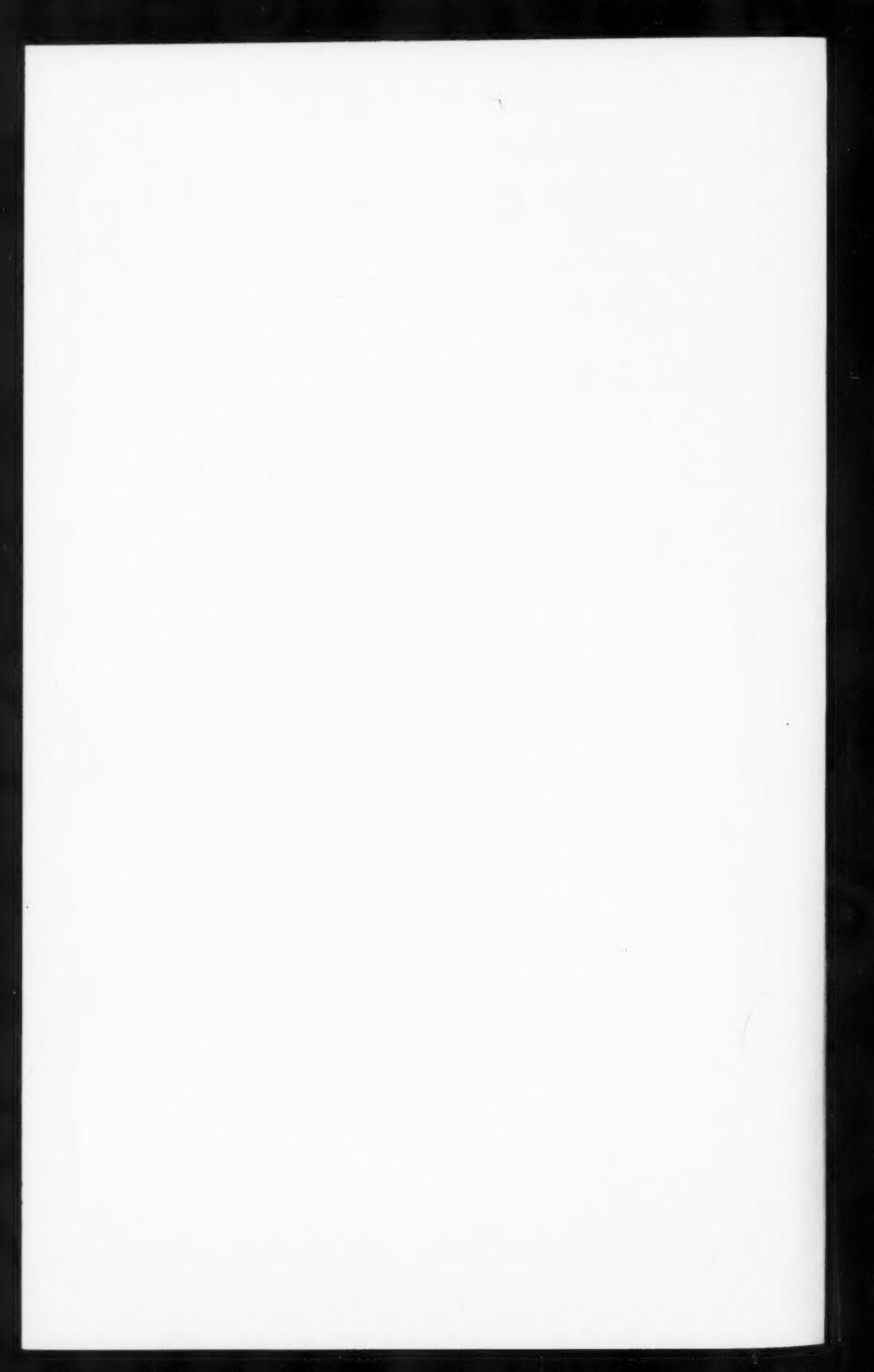
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SMALL INDUSTRY IN ECONOMIC DEVELOPMENT¹

BY HENRY G. AUBREY

MANY countries' hopes and expectations of economic improvement after the second world war found expression in a number of bold development plans, designed to reduce the gulf between developed and underdeveloped countries. During the postwar years that gap appears to have steadily widened. According to an estimate made by the United Nations (1949),² most of the underdeveloped countries, containing more than half the world's population, had per capita incomes of \$100 or less, as compared with \$1400 in the United States and \$800 in countries like Canada,

¹ This paper is part of a research project on "Financing World Economic Development," which is currently in progress at the Institute of World Affairs of the New School for Social Research, under a grant from the Merrill Foundation for the Advancement of Financial Knowledge. The facts on which the study bases its conclusions are drawn from a great number of sources, but since much of the literature is repetitious, a selected bibliography is offered in place of what would be cumbersome and equally repetitious footnotes. Detailed data amplifying the material in the main body of the paper have been collected in separate monographs ("Small-Scale Industry in the Far East" and "Handicraft and Small-Scale Industry in Europe"), of which a limited number of copies are available from the Institute of World Affairs.

The author wishes to acknowledge gratefully the cooperation of the United Nations Economic Commission for Asia and the Far East, the Agricultural-Industrial Relations Branch of the Economics and Statistics Division of the Food and Agricultural Organization of the United Nations, the Co-operation and Handicrafts Service of the International Labour Office, and the following individuals: Professors D. R. Gadgil of Poona, India, William W. Lockwood of Princeton University, and Edwin P. Reubens of Cornell University, Mr. J. E. Stepanek and Mr. Y. L. Wong of the Technical Assistance Administration of the United Nations. To Adolph Lowe goes the credit for initiating this study, and the author's gratitude for his sustained cooperation in the analytical formulation of the issues. In preparing the paper in its present form the author has greatly benefited from the results of a Round Table Conference conducted by the Institute of World Affairs on June 30, 1951.

² United Nations, Statistical Office, *National and Per Capita Incomes of 70 Countries in 1949 Expressed in U.S. Dollars*, Statistical Papers, Series E, No. 1 (New York: October 1950).

New Zealand, Switzerland, and the United Kingdom. Whatever reservations one may have regarding the method of international comparison of national incomes used by the United Nations, the reality is inescapable, and must be remedied.

Rural overpopulation and underemployment are characteristic of underdeveloped economies, and there is a fair amount of agreement among economists that progress requires the withdrawal of surplus population from the land and its integration into an expanding industrial organization. At this point agreement ends, however, and the proponents of mechanization of agriculture, and of heavy or light industry, follow diverging paths.

Agricultural productivity may indeed be heightened by the removal of partially idle labor, the assumption being that simultaneous progress of industrialization will supply better implements and fertilizer, which will more than compensate for the loss of labor. This implies, however, increased application to the land of that other factor of production—capital. At the same time, more capital is needed to build up industry, so that it can absorb the surplus labor. And this, in turn, requires an expansion of basic services—power, transportation and communication, education, health, and administrative units—all requiring further capital.

This cumulative need of capital was not fully understood by most postwar planners. Their aim was to duplicate by large-scale industrialization as quickly as possible the pattern established by the industrial nations. They did not realize that enough capital could not be rapidly created by the impoverished economies themselves; nor did they consider that foreign investment, even including international loans and grants, would not come forward in sufficient volume for *all* desirable projects.

The crux of the matter is not a theoretical decision which is the more important: improvements in agriculture, in industry, or "economic and social overhead expenditure." If there is not enough capital to take care of all these needs at once, as is quite clearly the case, the problem becomes one of allocation of that

scarce factor. Its most efficient use must be the vital concern of underdeveloped countries, and is equally important to foreign investors, for the outcome of any single venture depends on the progress of the entire economy. But long-run efficiency alone cannot be the sole consideration when accelerating population growth is steadily depressing the standard of living. It is necessary to increase output rapidly enough to raise real per capita income, even if in the beginning only slightly. Clearly, only a wise combination of various economic measures can approach these objectives.

The following pages are concerned primarily with the problem of industrial productivity. At least equally essential in underdeveloped countries is increased efficiency in agriculture. But this problem, as such, is too complex, and raises too many specifically technical issues of its own, for incorporation in a relatively brief examination of industrial development. Thus it will be touched on here only to the extent that it merges with the main subject under review.

The Setting of the Problem

Any realistic approach to the problem of capital allocation in industrialization must consider the balance to be established between small-scale and large-scale, light and heavy, labor-intensive and capital-intensive, industries. In determining the desirable and practical levels of technology in specific instances, it will be necessary to find a place for handicrafts for a considerable period. And finally, thought must be given to what weight should be accorded rural and urban industry.

It is, unfortunately, extremely difficult to achieve a sharp definition of what constitutes small-scale or large-scale industry, home or cottage industry. In some cases distinctions are made on the basis of the number of workers employed, with all plants employing fewer than 10 classified as small-scale. In others the use of machinery is regarded as the distinguishing feature of large-scale operations. And in still others it is the site of activity—home or

workshop—that determines its category. Classification is also made according to the relationship existing between the producer and the market for his product or raw material. Actually, all such categories overlap to an extent that makes clear-cut definition difficult and perhaps not even fruitful. Moreover, there is an almost infinite number of intermediate types which defy clear-cut classification.

The tendency to discuss these institutional forms of production in terms of mutually exclusive alternatives may result from what could be called a "technological bias." Economists in industrial and underdeveloped countries alike are inclined to regard the course of western industrialization as a historical process that will have to be duplicated by other developing areas. According to traditional analysis, economic development starts with homework for home consumption, and progresses through homework for the market to the putting-out system and the factory system, with hand-operated and then power-operated machinery. In this oversimplified image of western development, small-scale industry seems doomed.

Actually, small enterprise has displayed a remarkable persistence. In Germany, France, Switzerland, and other continental countries there still exists an important core of home industries and small-scale workshops. True, some of these industries are gradually receding under the constant pressure of large-scale competition. But it is important to note that in our already industrialized countries the process took several centuries, and that for extended periods various stages of development existed side by side. In Japan, even after seventy years of industrial development, home industry, very small workshops, and modern, large-scale industry can still be found in close proximity. The transition from one kind of industrial organization to another is effected by a slow shift in the relative importance of the various systems in the total output.

There is reason to believe that those countries now on the threshold of industrialization face a still more extensive trans-

formation than Europe has experienced in the more than one and a half centuries since the Industrial Revolution. Western industrialization sprang from a base of economic organization considerably more advanced than that of most underdeveloped countries today. The market system, the monetary and banking organization, and the substantial amount of pre-industrial manufacturing in large workshops helped to pave the way of transformation. Today, in contrast, the majority of the underdeveloped countries are characterized by a dual-economy system, in which a modern industrial, commercial, and financial organization constitutes small islands of modernism in a vast sea of regional subsistence economies. To bring wider areas to even that level of economic interchange at which the Industrial Revolution started would require considerable capital investment. Moreover, the social and cultural barriers to progress are far greater than they were in the now industrialized countries, and the trend to innovation, even among the literate and educated, is not strong.

In the ample discussions of the social problems of transition, there is almost always a fatalistic undertone of inevitable doom, with gloomy references to the "iron laws" of history. These notions are so widely accepted that only historians are interested in the actual course of the transition process; economists take for granted the apparently "preordained" outcome. But if the period of transition is going to extend, as we suspect, over decades, generations, or possibly centuries, would it not be well for economists to inquire whether the simultaneous presence of various "historical" stages may not express the economic and social needs of a country at a given stage of development? Would it not be profitable, indeed essential, to examine the potentialities of transition itself, and to work out the best possible *modus vivendi* for the different systems?

Thus far western industrialization has typically taken the form of large-scale urbanized industries, and the eventual application of this pattern to underdeveloped countries is regarded as inevitable by most economists and planners. In fact, the under-

developed countries themselves frequently reject as unworthy of consideration the mere suggestion that anything less than the latest technology might be acceptable. And yet, it should be quite clear that a number of economic and technological factors will determine the optimum level of technology under specific conditions.

Here again one must be wary in drawing historical analogies. The Industrial Revolution was based on the use of steam as motive power, and remained dependent on this source of energy for at least a century. Large size and concentration of operations effected economies which resulted in the pattern we tend to identify with modern industrialism. This type of organization was well established by the time the generation of power on a small scale by the internal combustion engine and the decentralized use of power through the electric motor became economical. It would be idle to speculate on what effect the availability of this equipment early in the course of western industrialization might have had on the size of plants in various industries and on the concentration of industry in large clusters. Such speculation, however, is not only justifiable but highly desirable in considering the future location and size-cost relationship in the developing countries.

The operation of any modern plant presupposes not only a source of power, but transportation and communication facilities, the availability of skilled labor, and a large number of those related services that industrial countries take for granted. It is easy to see that even with identical cost relationships the absence of several or even of one essential link may impair the economy of operation in a modern plant to such a degree that its very existence would be jeopardized. The high level of technology implied by modern industrialism involves a much greater dependence upon these factors than was the case in the early stages of industrial development. As a consequence, the scope of large-scale operations which an underdeveloped country can master in any given period depends to some extent on factors quite outside

the economic sphere—on a way of life that cannot be acquired overnight. The degree of social and cultural change implied by industrialization is perhaps more difficult to achieve than the creation of capital.

Since these considerations raise strong doubts whether currently developing countries must fully repeat the pattern we associate with western industrialization, the task of outlining other, and possibly more appropriate, patterns is legitimate. What are the determining factors—economic, technological, organizational—for size of plant and location? What is the minimum efficiency and what is the optimum efficiency under specific conditions? Which industries can operate efficiently in traditional rural surroundings? To what extent and under what conditions can small-scale industry compete with large plants? How can small firms complement large operations instead of merely competing with them?

These are some of the problems whose solution would go a long way toward determining economic policy aimed at the best use of restricted capital and other resources. This study does not pretend to offer answers to all the questions. Its chief purpose is to organize a representative section of the available material into a composite picture; to determine from these facts, so far as the material permits, the controlling factors; and finally, to analyze these factors in such a way as to indicate the framework within which further research would be fruitful.

Small Industry in the Far East

Since most of the available literature on the subject of small industry in underdeveloped areas pertains to the Far East, we have seen fit to focus our attention on that part of the world. In the present paper we offer only an overall picture, endeavoring to present it in such a way as to permit comparisons and conclusions. It should be said at the start that such a procedure is not without its pitfalls, for the many similarities among the various countries under discussion are more than matched by differences in social and cultural setting and national characteristics.

Evidence of the importance of handicraft and small-scale industry for the economies of all Far Eastern countries may be found in the extensive thought and discussion accorded the subject by individual governments and international organizations during the past few years. The United Nations Economic Commission for Asia and the Far East placed the topic on the agenda of its Committee on Industry and Trade, for its third session in Lahore in February 1951, and the International Labour Office discussed it at the Asian Technical Conference on Co-operation held in Karachi in December 1950. The protection of indigenous handicrafts was also discussed by the International Labour Organization's Committee of Experts on Indigenous Labor, which met in La Paz in January 1951. Two distinct policy aims seemed to emerge: first, to minimize the social effects of the progressive decline of traditional handicraft and, if possible, to arrest that decline by improvements in technology and organization; and second, to find a place within a developing economy for small-scale workshops or factories outside the large industrial centers, as an alternative and as a complement, rather than as a transition to large-scale factory industry.

QUANTITATIVE SIGNIFICANCE OF SMALL INDUSTRY

In all Asiatic countries, with the exception of Japan, traditional handicraft industries provide the greater part of manufacturing employment. Reliable statistics are not available, but the following estimates give a rough idea of the situation. In 1933 factory employment in China was estimated at just over 1 million, compared with 10 million engaged in handicraft. The factories, however, accounted for 22 percent of total manufacturing output. In India over 80 percent of all industrial workers are employed in small-scale or cottage industries. A 1931 census showed nearly 6.5 million persons engaged in cottage industries, compared with about 1.5 million in large-scale operations. According to estimates made by the International Labour Office, other Asian countries show a similar distribution of workers: in Indo-China in

1936 approximately 1.4 million persons were thought to be working in small-scale industry, compared with only 120,000 in modern industry; in Indonesia in the 1930's the respective figures were approximately 2.5 million and 300,000; and in the Philippines at least 60 percent of some 600,000 persons engaged in manufacturing work were in small-scale or home industries.

Of all the small-scale industries the most important, in terms of number of persons employed, is textile manufacture. This is to be expected, of course, since clothing, next to food, is the most universal economic need. Small-scale and cottage textile industries employ on a full-time basis approximately 2.5 million workers in India, 300,000 in Pakistan, 200,000 in Burma, and correspondingly large numbers in other countries for which precise statistics are lacking. If part-time employment were included, the textile industry would rank even higher in importance.

Spinning has been taken over almost completely by large industry, except in remote sections; in India hand spinning has been revived to some extent by the teachings of Gandhi. Hand-loom weaving, on the other hand, is still, and may be expected to continue to be, an important branch of home and small-scale industry. Depending on local conditions, the finishing industries, such as bleaching, dyeing, and printing, are also to a large extent still carried on in small plants; a well-known example of this is the batik industry for native sarongs in Indonesia. In the silk industry, which was of considerable regional importance in Japan, China, and India before the second world war, home operations included the raising of the silk worms and the reeling of the silk from the cocoons, in addition to twisting and weaving; quite frequently, however, the raw silk was the end product for the regional economy, and the other processes were carried out in other parts of the country or abroad.

As a rule, small-scale industry in the Far East caters to the daily needs of consumers, including leather goods, metalware, and household utensils, processed and manufactured foodstuffs, and

many other items. Those countries or regions, however, which do not have heavy industry, or are remote from the centers of manufacture or import, still produce by primitive methods iron goods, bricks, and other building needs from local raw materials.

RESPONSE TO COMPETITION: TECHNOLOGICAL IMPROVEMENT

Historically, the fate of small industry in Asia has seemed to repeat the example of Europe. Inexpensive textile goods, usually imported duty free, first from England and then from Japan, and penetrating ever farther inland with improved transportation, depressed the living standards of the village artisans. In China and India the process was accelerated by the creation of domestic mills. In all countries a decline of traditional handicraft resulted, but, as a rule, not complete elimination.

Competition from large-scale industry is met in various ways. The rural craftsman may withdraw from the field entirely, thereby increasing rural unemployment or underemployment. Or he may be compelled by the inadequacy of his income to accept almost any remuneration or profit, however small, rather than forgo it altogether. The rural worker or the urban craftsman will frequently try to make up for the pressure upon his income by submitting to longer hours of work on the part of the entire family. It appears that the pressure of competition results less often in a change of technology than in a lowered standard of living.

The most frequent reaction to competition appears to be a passive acceptance of what seems inevitable. Ignorance and illiteracy, the apparent absence of alternatives, and a continuous state of depression are probably the chief deterrents to seeking a way out. Any deterioration of price is shifted entirely to the shoulders of the artisan, who needs a reasonably regular cash income, however meager. The existing marked inequalities in incomes are thereby intensified. These economic obstacles to adaptation and improvement of technology and commercial organization are increased by the traditional rigidities of century-

old societies and cultures, often paternalistic and conservative and lacking a middle class, historically the carrier of progress.

It is easy to see that a remedy for the steady downward pressure on the standard of living could not be found without some measures of government assistance, local or otherwise. The world depression of the thirties, which was very strongly felt by certain export economies of the Far East, brought about remedial action in several directions. The case of Indonesia is a good illustration. The Dutch government's policy was traditionally in favor of free entry of manufactured goods. As a result, the age-old native industry of hand-loom weaving had already been hard hit by the time the depression struck. When the East Indies were further affected by the slump in the volume and prices of their exports, the government decided to embark on a program of industrialization, for which sentiment had been building up for some time in a rather academic fashion. A number of large-scale mills were built, but the major effort was directed toward the revival of the traditional hand-loom weaving and batik industry. The success of this policy is indicated by the increase in the number of mechanical looms between 1930 and 1941 from almost none to about 10,000, while the number of modern hand looms perfected by the government's Textile Institute increased from around 500 to 49,000. This figure apparently does not include the old type of throw-shuttle looms which are still widely used in outlying sections of the Archipelago.

Hand weaving and batik in Indonesia were and still are occupations for home industry and small shops. But these were not the only industries improved there in the thirties. The production of kitchen utensils, cutlery, and agricultural tools was also stimulated by instruction in improved methods of manufacture. Where the use of modern tools and small-scale machinery was too expensive for the individual craftsman, a central finishing plant was established to take over the half-finished product. As a result of such modern supplementation of the individual's work and of more careful inspection and finishing, the quality of the product

was so much improved that the better prices obtained paid for the cost of the establishment. Organizationally, such finishing centers belonged to a community or to several villages on a cooperative basis.

The improvement of equipment seems such a natural response in a competitive society that it may be hardly necessary to labor the point. Yet it is a fact that between one-third and one-half of the hand looms in India are still equipped with throw shuttles. Although the introduction of the fly shuttle was a forerunner of the Industrial Revolution, a very large proportion of hand looms in the Far East have not yet been equipped with this inexpensive innovation, which adds at least 30 percent to the efficiency of operation. The addition of a few other inexpensive improvements would provide a loom that would double the output of the old type. A semi-mechanical loom (called the Pit Automatic loom in India) was estimated to cost only 140 rupees in 1940.

Two American experts who worked with UNRRA in China reported that a 40-spindle, foot-powered, cotton-spinning machine, adapted from local design, would amortize its cost in a month if operated full time, a simpler and faster loom in four to five months.³ During the Japanese occupation the Chinese Industrial Cooperatives in the interior of China found that even a foot-powered cotton-spinning machine made from lumber and old tin cans quadrupled the output of old-fashioned hand wheels. The output of coarser-count yarn can be increased rapidly by the use of hand-operated multiple spinning machines with 7 to 14 spindles. These are simple, inexpensive machines which can be manufactured locally and require neither basic industries nor the import of capital goods. Furthermore, such simple spinning machines can use very short-staple cotton, by itself unsuited to

³ The reference to hand-powered spinning equipment is only apparently in conflict with an earlier general statement that spinning is done almost exclusively by modern machinery. In many eastern countries the total capacity of power equipment is not sufficient to provide all the needs of the weaving industry. Quite frequently hand-loom weavers in remote locations are not able to obtain sufficient yarn. Therefore an improvement in hand-spinning equipment might have local importance.

the faster and more complex machines. A similar situation exists in hand weaving, which can use waste yarn that would be refused by machine weavers. This phenomenon was one of the reasons for the survival of silk weaving in Gujarat, India.

In actual practice the introduction of improved equipment encounters a number of obstacles. In the first place, even such small amounts of capital as would be required are frequently beyond the reach of the individual handicraftsman. Conservatism, ignorance, and apathy also stand in the way of economic development at many points. Their remedy lies in general education and technical training, which can be successfully provided only with the assistance of governments. Nearly all governments operate technical training schools, but it is necessary to train on the village level also, since the school trainees either do not return to the villages or, if they do, lack the capital to set up the improved equipment. It has been suggested that industrial instruction for village handicraft should operate on lines similar to the agricultural extension services which have proved so successful in many countries. Cooperative institutions would be the most useful instruments at the local level, both for training and for the provision of improved equipment on easy terms. This is precisely what many provincial cooperative societies offer in India, Pakistan, Burma, and other countries.

SPECIALIZATION

Characteristic of ancient handicraft methods is the completion of the finished product by any required number of operations performed in one workshop or by one person, whereas factory methods require that each worker perform, as a rule, only one or a few of the many operations into which the production process is broken down. The reorganization of handicraft procedures to fit modern industrial methods was a slow and gradual evolution. In England, as long ago as the first half of the nineteenth century, it was customary even for outweavers to receive the prepared warps. In China, however, weavers in specialized weaving com-

munities still prepare their own warps, and this is true of many other countries as well.

But specialization alone, it should be noted, is not identical with modernization; in India, for example, warping and sizing are frequently done not by the weaver but by special castes of craftsmen, using the most antiquated methods and without benefit of modern machinery. A simple sizing machine would go a long way to improve the workers' productivity, but the capacity of such machines makes them suitable for centralized operation only, preferably on a cooperative basis, as is now being recommended in India.

Similar advantages can be achieved in finishing processes, like the bleaching and dyeing of textile piece goods. We have already referred to the success of finishing centers in Indonesia in other trades. Combined with inspection, grading, and packaging, and possibly even marketing, such establishments build a bridge between the individual craftsman and the modern market's requirements of standardized quality. In Japan this type of cooperative organization has reached an unusual degree of perfection; as a result, certain benefits of large-scale operation are conferred on a number of small-scale enterprises.

JAPAN: A CASE STUDY

One of the most interesting aspects of the Japanese development is the division of labor among separate manufacturing units. Taking first an example of a native Japanese industry, we find that the manufacturing of paper lanterns and paper umbrellas is rarely done in one plant. Frequently six different families each complete only a single stage in the making of a lantern, and six to eight families are required to perform an equal number of manufacturing operations in the making of umbrellas. And sometimes the final process is carried out by the dealer who sells the completed article.

Another traditional industry producing for both domestic sale and export is dollmaking. Every factory has an artist who designs

the dolls and makes the molds; these, however, are not filled and burned in the factory but are sent out to village kilns for that purpose, an interesting example of cooperation between urban and rural industries. The painting and dressing of the dolls are divided into a number of simple operations, which are usually done within the factory by various workers. But it would not be inconsistent with Japanese industrial practices to farm out some of the operations to homes or small shops in the neighborhood.

Another example of division of labor among small shops is the fountain-pen industry, which is again flooding world markets with cheap goods. The celluloid tubes, rubber tubes, points, and feeders are all made in separate factories. Another shop then assembles, finishes, and markets the product.

A similar situation is to be found in the cutlery industry, one of whose centers is around Nagoya. A number of large factories distribute raw materials and partly finished products to small units, consisting as a rule of fewer than 10 workers. Each unit specializes in one specific operation, like sharpening, tempering, polishing, or assembling. This kind of village specialization is exemplified by Seki, near Nagoya, which has about 5,000 homes, of which some 500 are engaged in one or another process of cutlery manufacture.

The bicycle industry in Japan is an interesting example of a large western type of industry which has adopted a system of extreme specialization. It was started for the purpose of making spare parts for the repair of imported bicycles. But the Japanese soon found that standardization of parts permitted the manufacture of many components in very small manufacturing units, of which very few make more than two kinds of parts and many make only one. Sometimes even a single part is not completed in one shop or home, but is shaped in one and painted or plated in another. For instance, one manufacturer has four simple machines in the front room of his house; with his daughter and four employees he manufactures nuts, which he sells to the factory from which he gets the raw material. Next door, another home

unit, with four machines operated by the owner and one employee, finishes hub castings received from a large factory.

The Japanese rubber industry illustrates another type of division of labor. Certain operations in the rubber industry, like mixing and curing, cannot be done without fairly large machinery, but the system of performing various operations in separate shops rather than under one roof has not been entirely abandoned. Small shops receive compounded rubber, mold and shape it; the curing is done by another shop, or possibly by a larger factory. Painting and other finishing processes are performed by still other units. We notice in the rubber industry, however, also a division of labor between units of different size: large and small industries produce different articles. Thus tires are made exclusively in large factories, boots or shoes in medium-size plants, toys and small rubber goods in the smallest shops or homes.

This aspect of industrial organization, which may turn out to be one of the key problems of our analysis, should be further illustrated. Contrary to what might have been expected, the relative share of large factories in wool weaving in Japan not only did not increase but instead declined, from 59 percent of total output in 1924 to 21 percent in 1935. One of the chief reasons was the growing popularity of the western type of clothing for men, with its greatly enlarged variety of types and patterns. The large woollen mills found that it was more profitable to concentrate on staple items, which could be manufactured in large continuous runs. Small manufacturing units, however, and primarily the very small home shops, were quite satisfied to make just one or two pieces of one pattern and then switch over to another. Or each small shop would specialize in only one or two patterns or types. Thus the market was supplied with a huge variety in small lots. The small units also proved much more flexible in adapting to changing taste than did large mills with heavy overhead. This kind of specialization by type of goods is likely to narrow the area of competition between large-scale and small-scale industries.

Another phenomenon that can be observed in Japan, and to

an even greater degree in industrialized countries, is the complementarity between large-scale industries and smaller units. Some spinning mills in Japan have their own weaving departments, but they also farm out work to independent weavers. Such a system of integrated but decentralized production relieves the weaver of worries about his yarn supply, but it may in turn increase his dependence upon the larger unit to an extent which leaves him little more than subsistence wages.

This leads us to cite, as a last example, the Japanese brush industry, which has again several interesting features. The drawing of bristles is frequently done as a part-time occupation by farm workers and housewives. In Osaka, however, a worker may rent space, electric machinery, and power in specially equipped buildings in order to shape the brushes. Such workers accept contracts from dealers at piece rates and fill them with the help of this rented equipment. Some of them may rent several machines and employ helpers. However large or small the worker's profit may be, he remains a free contractor and makes his own timetable, working in his spare time if he wishes. This type of operation is used for the manufacture of the cheapest type of brushes for export, for which a western technical adviser would probably recommend elaborate methods of mass production.

Thus there is in Japan a system of minute subdivision of labor among small independent units, and also a system of part-time labor, to be found not only in rural districts but in the cities—labor during evening hours, or by housewives, and so forth. The undesirable social aspects of these practices should not be minimized; and on the other hand, such labor could not be attracted to factories under any conditions.

Undoubtedly this wide decentralization can be partly explained by the Japanese labor market. The cities grew so rapidly that they absorbed the entire population increase of the last decades. Yet this growth was not fast enough to supply all the labor needs of the fast-growing industries. Factory managers were forever

seeking to attract more labor from rural districts. Many textile mills kept dormitories for country girls who came to the city for a few years to supplement the family income and save for their dowries. They returned home to marry, and thus the turnover of labor was considerable. We see in Japan a phenomenon typical of developing countries: the simultaneous existence of rural overpopulation and underemployment with a shortage of skilled labor for a rapidly growing urban industry. This deep-rooted, though only partial, immobility of labor has been a contributing factor to the decentralization of industry, to small-scale industrialization of the countryside, and to the development of complementarity between large and small units. There is hardly any doubt that this process makes for a far greater geographical diffusion of technology and industrial mentality than mere technical training in specialized institutions could achieve.

It would probably have been impossible to obtain such widespread results in Japan without the availability of cheap electric power. The restricted area of Japan, her early development of transportation, and her ample hydro-electric resources give her greater advantages in this respect than many other vaster Asian regions. A small electric motor can drive many kinds of modern equipment in the smallest shops or the workers' homes. The surprising progress of small-scale wool weaving in Japan, mentioned above, might not have been possible without simultaneous modernization. Though composed of very small units, the wool-weaving centers in Aichi Prefecture had by 1934 changed over almost entirely to power looms, while in 1923, 53 percent were still using hand looms. There were also other improvements, chief among them a shift from single-width to double-width looms suitable for the manufacture of western types of cloth.

To round out our picture of Japan we offer a few figures illustrating the importance of small industry in the Japanese economy.⁴

⁴ Japanese occupational statistics are not very satisfactory, especially as regards plants employing fewer than 5 workers. The figures cited here are derived from the "residual" method of estimate followed by the majority of writers.

Very small plants, employing fewer than 10 workers, played a considerable role in Japanese industry until about 1941. After that, manpower regulations for total warfare compelled the closing of many small plants. Large-scale destruction of wide urban areas reduced the number of establishments, but some recovery has occurred since. The share of small-scale establishments varied from industry to industry, but was most significant in certain consumer-goods fields. In 1932, for instance, employment in plants of fewer than 5 workers accounted for 48 percent of total employment in the cotton-weaving industry, 66 percent in silk fabrics and mixtures, 57 percent in porcelain, and 85 percent in woodenware. According to an estimate elaborated by William W. Lockwood from the census of 1930, almost 2.8 million people, or about 59 percent of the approximately 4.8 million persons employed in private manufacture in that year, worked in establishments employing no more than 4 workers. It is true that in terms of output the share of these very small plants declined from 30 percent of total manufacturing net value in 1930 to 26 percent in 1934 and 23 percent in 1938 and 1939, but this development was partly caused by a substantial government-stimulated growth of heavy industry in preparation for all-out war.

Several writers have been tempted to compare Japanese statistics with European precedents. Uyeda interpreted statistics of the early 1930's to indicate that, with regard to the overall importance of small industry, Japan had then reached the stage of Germany in the 1880's. A different set of statistics induced Reubens to remark that Japan in 1939 seemed close to the Germany of the 1920's.

We do not believe that structurally quite different economies can be compared on the basis of a few aggregate figures. It is true that a 23.5 percent share in total employment accounted for by Japanese plants with fewer than 5 workers in 1939 seems to be matched by a 23.8 percent figure for the Germany of 1925 (referring to the proportion of employed persons in all industry except mining and construction who were employed by enterprises with

no more than 5 workers). This overall similarity is deceptive, however. Such plants employed only 3 percent of the workers in the entire German cotton industry; the corresponding figure in the Japanese cotton-weaving industry was 48 percent (in both cases the manufacture of clothing is excluded). In Germany practically all cotton weaving was done on machines, while in Japan (1935) 81 percent of the looms in factories with fewer than 10 were hand looms. More detailed study would disclose even greater discrepancies underlying an apparent comparability.

But though much more study is required before valid comparisons of a historical nature can be drawn, certain similarities of development undoubtedly exist between the more industrialized European nations and Japan. It seems clear that in Europe small-scale industry has not been eliminated. On the contrary, there are certain important fields of activity which apparently even the rapid advance of the most modern technology has not wiped out. The need for supplementary employment in rural areas endures. Labor shortages have induced decentralization of industry, and in some cases a dispersal back to the homes whence early capitalism appeared to have driven it forever. Cheap electric energy has provided even home industry with the benefits of modern equipment; specialization and appropriate commercial organization have insulated certain industries from the effects of competition from large-scale manufacturing units.

MARKET ORGANIZATION, MIDDLEMEN, AND COOPERATIVES

Special emphasis must be given to the importance of commercial organization for the survival of small-scale industry in Asia. The craftsman or owner of a small shop has to contend with many difficulties, which frequently prevent him from making the best use of his meager resources and abilities. His lack of capital makes him dependent on his supplier for credit, and upon his customer for quick cash. If his supplier, his customer, and his financier are one person—the traditional middleman or merchant—his position deteriorates to one of complete dependence.

The role of the middleman is rightly stressed as one of the most important problems in Far Eastern small-scale industry. It is necessary, however, to distinguish between the middleman's useful function and the excessive remuneration he is able to extort for it. The middleman or trader is indispensable as a link between the outside market and the multitude of local craftsmen. He not only knows where to sell their products but usually provides the raw materials and frequently the capital. It is in this function as a capitalist or moneylender that his power is most strongly felt. He is the man to whom the worker will turn for funds in case of death or sickness, or for the celebration of a marriage or for other festivities on which local prestige depends. He knows his debtors personally and he is usually their sole source of credit. For that very reason, however, an artisan may by-pass a better opportunity for trading or buying because he dares not endanger his connection with the employer to whom he is in debt.

The obvious way out is some sort of organization in which a number of individuals combine for joint action. Cooperatives are clearly the best remedy, and we have already noted several instances where their operation has been highly successful. In China, Indonesia, India, and Japan, such cooperatives have often come to life spontaneously. But the obstacles to practical operation are very great, and so is the number of failures. Lack of experience, private feuds, and petty graft are partly to blame. The chief reason, however, is the very dependence which the cooperative is supposed to remedy. The middleman opposes the cooperatives, of course, and will not fail to make this clear to the craftsman who is in debt to him. The latter realizes that he may lose the support of the middleman if he joins the cooperative, and will be helpless if it fails. Moreover, the cooperative may not be able to guarantee year-round employment to provide even the modest minimum for which he depends on the middleman.

Lack of space does not permit a detailed analysis, but the cooperative clearly needs a wide base of operations, which should include all the commercial functions of an entire industry:

assuring a steady supply of raw materials at reasonable prices; obtaining improved tools and equipment; making supplies and equipment available to members on easy terms; instructing members in the use of improved methods and inducing them to make what the market demands in reliable quality; taking over from the members what they make and paying cash or part cash for it; if necessary, finishing, inspecting, and grading the goods for sale, building up a merchandising organization strong enough to sell all that the members make, and carrying buffer stocks for seasonal variations.

This combination of requirements can hardly be met on the local level alone, even under the most favorable conditions. The federation of local cooperatives in regional or national organizations and the support given by governments have proved indispensable. Only in this way can the benefits of large-scale commercial organization and administration filter through to the individual units. In addition to performing the functions outlined above, recognized federations can make their weight felt in the procurement of government contracts, and in basic understandings with large industry on a demarcation of their respective interests. Several provincial cooperative associations, notably in the field of hand-loom weaving, have had some success in India, especially in the provinces of Madras and Bombay. Similar organizations have an old history of success in Europe, most prominently in the Scandinavian countries, and as cooperative productive societies in France and the Soviet Union. In the latter country they have been assigned a considerable share in the manufacture of consumer goods.

For the most part, the advantages of cooperation are in Asia better understood than applied. The previously mentioned obstacles and the widespread ignorance and illiteracy make the spread of cooperatives a slow and difficult task. Government assistance at all levels is usually the first, if not the only, condition of success. The shortage of capital and credit can rarely be overcome without government grants and loans. The modest begin-

nings of effective cooperation in India date back to the start of governmental assistance in the 1930's. In Japan the government has long encouraged cooperative organizations, but, by and large, direct governmental assistance was not a prominent feature of small-scale industrialization until the 1930's. The depression and the opportunities for export trade brought about by depreciation of the yen led to a chaotic state of competition and to innumerable complaints about lack of standards and quality. Beginning in 1925, the Japanese government passed various acts to form manufacturers' associations whose functions were not only control and regulation, but also the provision of joint facilities in most of the fields previously mentioned. As a result, Japan had 7,553 cooperative associations by 1947, with a membership of over 800,000.

RURAL MANUFACTURING

A picture of small industry in the Far East would not be complete without a reference to the importance of rural industries. Rural manufacturing is not limited to the processing of agricultural commodities—flour grinding, rice husking, or tobacco manufacturing. It also includes all kinds of simple manufacturing that does not require much capital. It is essentially of two types, which differ in their economic function: full-time activity for non-agriculturists of the village, and part-time employment of peasants.

The continued existence of rural craftsmen is in part simply a locational phenomenon. They cater to local needs, as they continue to do even in industrialized countries. But with the help of a regional trading organization their product may be marketed over wider areas, depending on the specialization and efficiency of their production. Quite frequently the traders' demand for merchandise is the origin and impetus of manufacturing activities around such trading centers. This can be illustrated by Chekiang Province in China, where about three-quarters of the manufacturing output is produced in rural areas. It is this section of rural

manufacturing which is most vulnerable to competition from large-scale industry; the output for local and home requirements is less affected by machine-made goods, which have to be brought into the more remote areas at a high cost of transportation.

The peasant's economic motivation for going into manufacturing as a subsidiary activity is quite different from that of the village craftsman. The former's need for additional income is linked to the low productivity of his land or the small acreage at his disposal. Rapidly increasing population, land-splitting inheritance systems, lack of capital for improvements, and backward agricultural methods are some of the reasons why the independent peasant's income is small. Worse yet is the situation of the tenant, who is usually a former peasant who lost his land through the pressure of debts, the machinations of wealthier or politically more powerful elements, or some other personal misfortune. Long-established systems of tenure and extortionate rents frequently deprive the tenant of 50 to 70 percent of his crop. What remains is not sufficient to feed him and his family, and any small additional income means the difference between starvation and subsistence.

In any case, nature and climate keep the peasant idle part of the year—between sowing and harvesting, and again between crops, if not more than one can be grown in a year. This period of idleness differs considerably from region to region, but various estimates for the peasant's working time on the land run as low as three months for certain regions of China, and five months for parts of India. In nine districts of northern China 84 percent of all agricultural work is done within six months, and only 16 percent in the other half year. These circumstances not only permit but compel the farmer to engage in supplementary activities. It has been estimated that in Japan, a country well along in industrialization, 54 percent of the peasants were engaged in supplementary jobs in 1938. A survey of a group of farm families, made in 1932 by the Japanese Ministry of Agriculture and Forestry, discloses that independent farmers were then deriving

about 20 percent of their total income from subsidiary employment; the tenant farmers' dependence upon such additional incomes was higher. In India, however, subsidiary occupations are restricted by the caste system, which usually reserves handicraft work to certain specified groups.

Determinants of Size and Location

Having reviewed the past and present tendencies of small-scale industry in the Far East, we propose now to analyze the factors that are today determining priorities and broader policy for the developing countries. The main consideration for the present and the foreseeable future, as has already been pointed out, is the limited availability of development capital. It is therefore worth while to take a look at the allocation of capital in the most recent and most realistic of postwar plans for the Far East: the Colombo Plan for British Commonwealth countries in south and southeast Asia. In developing this plan the Commonwealth nations intended to draft a program large enough to provide for essential development needs in the next six years. Thus the production of food and basic raw materials for the requirements of rapidly growing populations was given priority. Agricultural, transportation and communications, and electric-power projects had to be assigned more than 70 percent of total funds. Next comes expenditure for social capital, chiefly housing, health, and education. It is significant for our purposes that industry ranks next to last, with an average of only 10 percent of projected expenditures, public or private. The percentage distribution of the total planned expenditure of 1,868 million pounds sterling is as follows: transportation and communication 34; agriculture 32; social capital 18; industry and mining (excluding coal) 10; fuel and power 6.

This brings up the big question of development policy: how much industrialization can a country afford? The first practical answer is provided by the Colombo Plan. Of the countries included, only Pakistan plans more than 10 percent of her

expenditure for industry, because her partition from India left her virtually without any modern industrial plant. Ceylon, still depending on export agriculture, plans only 6 percent.

The next issue to be decided is how to use most effectively the limited capital for industrial development. Two major areas of investigation present themselves: how much additional plant can be built; and how much capital should be allocated to the replacement or the improvement of old equipment. Each of these areas is, in turn, subject to various considerations.

If we consider the efficiency of new equipment and plant, it is very tempting to take the long view and to select a level of technology geared to future needs. In this manner, it may be argued, there will be a minimum of waste as the economy develops. This thinking stems typically from the perspective of capital-rich, technically fast-developing industrial regions. Clearly the obsolescence of a plant depends upon the rate of development of the economy as a whole, and upon competitive alternatives in the specific industry under consideration. From both angles the limitation of available development capital is of decisive importance in underdeveloped countries. If it is true that available capital is small compared with total needs, and that a rate of development faster than population growth is a hope rather than a definite prospect in most countries; if it is further true that the output of efficient and less efficient units alike will be required for the growing needs of the population; if it is finally true that under these conditions development can only be very slow in the economy as a whole and in most individual industries—then indeed obsolescence and waste seem to lose a great deal of their significance. Thus the problem at hand is one of short-term efficiency; simple equipment pays for itself quickly, and not much overall change need be expected within the period of amortization.

We shall not discuss here the general problem of how to allocate available capital resources to specific industries. This decision is as a rule dominated by the natural and social-political conditions in which an individual country finds itself. To take the

most obvious example, the relative emphasis on heavy industry as against light industry is first of all a matter of available natural resources. In addition, considerations of national security or of political power and even dogmatic principles of planning enter into the picture. But even countries that plan to allocate a large share of their resources to basic projects whose output will be intangible, or at best very long delayed, will do well to devote their remaining capital resources to less capital-intensive types of production which yield output quickly. Within the latter field, too, decisions have to be made: the size and location of plant, and the level of technology. Is the prevalence of small-scale manufacturing units really only the result of general backwardness, as it appears to the historian, or are there economic, institutional, and social reasons for their continued existence in the future as well? To what extent do the limitations of capital resources affect the geographical and the size distribution of manufacturing activities?

DOMESTIC CAPITAL SUPPLY

In discussing the capital supply for industry, we treated it as if it were of a determinate and invariable size. In reality, however, the availability of capital for manufacturing is to some extent connected with size, type, and location of plant. Capital markets of underdeveloped areas are not highly organized; they are not usually suited to the raising of large blocks of capital for big industry; and personal control is frequently preferred to anonymous fractional holdings. Thus it may be easier to raise private capital for a number of small enterprises over a period of time than for a large plant.

Moreover, only a part of an underdeveloped country's wealth is located in the large cities. It is true that financial centers have some attraction for industry, especially where financial and managerial functions are combined. Accumulated trading capital will expand into industry in ports, which are in any case desirable centers for production and marketing. But there exist in rural

areas and provincial trading centers sources of capital which have not been sufficiently tapped. Some economists believe that rural exceed urban savings. The merchants or middlemen who finance innumerable small manufacturers in Asia are located, for the most part, in small towns or villages. Peasants' and craftsmen's hoards, which would not be available for shares in remote impersonal ventures, might well be attracted to local enterprise which is a part of their daily experience. Small funds can also be accumulated to mutual advantage in local productive cooperatives which provide capital and work at the same time.

Thus more capital may be available for small industry than could ever be mobilized in underdeveloped countries for large industry alone. Furthermore, in small plants a larger share of whatever capital is available could be used for productive equipment. Large industry requires in addition to such equipment, capital-consuming installations like power plants, workers' housing, administrative offices, and other capital-intensive overhead expenditure. Large-scale manufacturing for indeterminate demand requires the erection of storage facilities and the carrying of inventories which a small manufacturer who sells in a well-defined local market does not need.

Concentration on small industries may be capital-saving also in other ways. We have noted that in the Colombo Plan only 10 percent of the funds was left over for industry after expenditure for basic projects. Social capital, which includes housing and health, averages 18 percent of total expenditure in the entire region, but it makes up more than 50 percent of the expenditure in Singapore. This illustrates vividly the large cost of urbanization. Housing is only the most obvious item; streets, sewers, water, light, public services and health, safety measures, and offices for all levels of government require huge initial amounts for construction, and periodic expenditures for upkeep and administration.

The great economic cost of urbanization was in part delayed during the industrial transformation of the western countries, and

as a result the social cost in human misery, disease, and death was extremely high. Today, in Asia and elsewhere, slum conditions will not be tolerated much longer in industrial cities where they exist. And it is certainly not compatible with modern minimum standards to permit the spread of industrial slums with the progress of industrialization. Thus, under the pressure of unionism and general social awareness, urbanization will in the future tend to be even more capital-intensive than in the past. The conglomeration of large industry in the cities will therefore require social overhead capital expenditure a part of which could be deferred or even avoided by a wider use of smaller units scattered in rural areas.⁵

Under conditions of capital scarcity it appears, therefore, that several factors combine to favor the greatest possible use of decentralized small-scale industry. In the first place, some capital may be available only for small local industries, its use thus increasing the total capital supply. Second, by using relatively labor-intensive technology, which requires less capital per unit of output, more total output can be achieved with a restricted amount of total investment capital. Third, in small plants a larger part of total investment can be used for the productive processes than in large industry, which requires additional capital-intensive overhead expenditure. And finally, small rural industry can do without a large part of urban services, and can save for productive purposes that part of capital expenditure which would otherwise be reflected in the cost of urbanization.

LABOR SUPPLY

In addition to the obstacle of limited capital supply, the introduction of large-scale urban industry encounters another in the

⁵ On the other hand we cannot ignore the warning of population theory that the effect of many small improvements may be cancelled by a more rapid increase of population. Historical experience has shown that population grows faster in rural areas than in cities. If rapid urbanization were the only way to check population increase then indeed the cost of urbanization could not be postponed. We do not believe, however, that this study can or should enter into a discussion of this controversial issue.

scarcity of skills among labor and management alike. Traditional skills are of little use. Moreover, in a system of manufacturing in which the worker performs only one operation and has nothing to do with the beginning and the end of the entire process, the incentive of craftsmanship has to be replaced by a willingness to obey commands. Complex machinery means little to the worker without a protracted period of acquaintanceship. Similar difficulties of adaptation need to be overcome by management. Where the family has been the traditional productive unit, it is not easy to recruit a staff of responsible managers for modern enterprise; the evaluation of market trends requires greater skill and experience than are needed for manufacture that is conducted to consumers' orders.

Quite apart from skills there are definite local limits to the quantity of labor, which is widely distributed. Urban industry needs to attract labor from the adjacent countryside, or possibly from fairly remote regions. This may not be too difficult if urban industrialization does not proceed too fast. But we noted in regard to Japan how manufacturers were compelled to recruit labor from farming districts, sometimes at considerable cost. Underemployment in rural districts is not alone a sufficient incentive to migrate. Conservative social habits, strong family ties, poor living conditions in fast-growing cities, all restrict the mobility of labor.

This fairly general situation suggests an alternative to the historical pattern of shifting labor to urban capital. Japan and other countries have found it desirable to bring equipment and employment to rural labor, frequently at a saving of capital and cost. The total supply of local labor is sometimes more limited for large-scale plants on strict working schedules than it is for very small units. We have already pointed out the inclination of rural labor toward part-time and home work. Expensive equipment of large-scale industry cannot economically stand idle in accordance with fluctuations of labor supply, but small plants, which use but little and inexpensive equipment, are much more

flexible in that respect; their operation at odd hours or slack seasons, notably in rural districts, can make a significant contribution to the total supply of goods in a growing economy.

EFFICIENCY OF OPERATION

We come now to the vast problem of the relative efficiency of large-scale and small-scale plants, of higher and lower levels of technology. There is, even in developed countries, no general agreement about the correlation between efficiency of operation and the size of the plant or the size of the industry. Investigations like those of TNEC and the Reed Committee have shown a greater variation in efficiency among plants of similar scale than between large and small plants in general. In underdeveloped countries, however, there are specific factors which tend to decrease the relative efficiency of large-scale and modern technology.

Identical modern equipment often produces less in underdeveloped areas. The continuous operation of high-speed machinery is impeded by the operator's lack of skill, carelessness, or indifference; flaws in raw materials also cause repeated and long interruptions; breakdowns are more frequent and repairs take longer. Thus the output per unit of capital is drastically reduced, sometimes by as much as half. Moreover, the continuous and interlocking flow of raw materials and intermediate products all through the process of manufacture is one of the conditions of efficient large-scale operation. The effect of stoppages anywhere along the complicated path of manufacturing is not only felt at the specific trouble spot in question but is multiplied by the very size of the establishment. The degree of efficiency needed to keep such disturbances at a minimum is rarely obtained in less developed countries, even after considerable expenditure for training.

These facts demonstrate why the experience with modern technology in industrial countries cannot be transferred without question to underdeveloped areas. It is likely that the maximum size for efficient operation may be quite low in certain regions. The

question arises, of course, whether there are not minima below which modern technology would not be economical at all. No doubt many engineers would place the minimum rather high, because their entire experience is based on a resource pattern in which capital is relatively plentiful as compared with labor. But evidence to the contrary was furnished by the Agricultural Industry Service of UNRRA, which found it possible to erect, at incredibly low cost, plants so small that they would have been rejected as uneconomical by most engineers of industrial countries. By way of example, we mention a cement plant with a weekly output of 400 bags, a brick kiln producing 20,000 bricks a week, and a sulphuric-acid plant with a weekly output of only 4 tons. It appears, therefore, that the possibilities of small-scale technology are frequently underestimated; the "overdesigning" of plants for underdeveloped countries induced by this point of view results in waste of capital resources instead of the optimum technology for primitive conditions.

Clearly, the controlling factor in decisions on level of technology and size of plant is the relative supply and the price of the factors of production. In underdeveloped areas capital is scarce relative to labor. This is true not only in densely populated regions; it could be taken as the chief criterion in a definition of economic backwardness. If capital is scarce and expensive, and if labor is plentiful and cheap, it would seem natural to combine these two factors in a less capital-intensive technology than in industrial countries where the relationship is reversed. This judgment should be reinforced by the fact that heavy and bulky imported equipment entails heavy shipping costs and incidental expenses, which widen the discrepancy between the cost of capital and of labor.⁶

Hand-operated equipment in underdeveloped countries is frequently so primitive that there is much scope for technological improvement, even without the use of power. Still, in the long

⁶ Possible savings in foreign-exchange outlay may also be worth considering in deciding the level of technology for new equipment.

run, small industry cannot survive economically unless it assimilates the potentialities of power. We need not, however, regard steam and electricity as the only sources of power, without which industry is doomed. Water wheels along rivers or irrigation ditches can be used to advantage. Wind wheels, ancient sources of power, can be used to drive small generators and store up electricity in batteries. Even large-scale generation of power, near the source of fuel or hydro-electrical energy, is feasible, as the power can be distributed over wide areas by grids; it is no longer necessary to cluster industry at the site of coal.

Capital and labor are not the only determinants of industry's cost. Production overhead and the expenses of commercial management and distribution affect large and small units very differently. Labor needs relatively little supervision where the production process does not involve the complicated and continuous flow which we mentioned above as characteristic of large operations; the latter require large overhead expenditure for management, supervision, records, and staff, in addition to the amortization of capital-intensive overhead investment in storage and office buildings, office machinery, and supplies. It is easy to see that such overhead can be justified only if it is spread over a still larger continuous volume of output than the nature of modern large-scale equipment itself requires. Again these considerations point to a comparative advantage for small-scale enterprise.

The costs of distribution account for a considerable part of the retail price of goods, even in developed countries. Small local manufacturers could dispense with many of these: packaging and shipping, financing of inventories and accounts receivable, sales commissions, and dealers' markups at the wholesale and retail level. Most underdeveloped countries have no large unified markets, but consist of any number of small market sections between which the flow of exchange is very restricted. The size of the market is further limited by transportation deficiencies. The cost of out-of-town transportation may provide a powerful

element of protection to local industries against machine-made goods of lower production cost which have to be brought in over long distances with primitive equipment.

This same transportation factor may of course have also an adverse effect, in retarding the introduction of new machinery—a consideration that is very important in regard to agricultural machinery. But many simple tools for an interim improvement of agricultural productivity can easily be manufactured from local materials by scattered light industry. Regions closer to the main arteries of transportation could possibly afford some heavier equipment; thus different levels of technology may be economical and desirable at the same time in various parts of a region.

IMPROVEMENT OF EXISTING FACILITIES

The discussion so far has been concerned with various considerations regarding the size, technology, and location of new plants. Developing countries also have the alternative of capital expenditure on the improvement of existing facilities. As has been demonstrated in China, India, and other countries, a number of improvements can be achieved with very little capital by making changes in design, by the use of a little more metal, and in many other ways. Clearly the marginal increase of output per unit of the scarce factor, capital, will be very large if the primitive equipment of traditional industries is improved. Social policy and social considerations may weigh heavily in the allocation of resources to improvement of existing equipment. Whenever large numbers are employed in traditional industries, there is much to be said for the preservation of existing patterns. It may be sound procedure to improve technology step by step in many places at once, rather than to sink large portions of a limited capital supply in a few large ventures.

Improved equipment in small manufacturing can also become the nucleus of scattered light industry of a more advanced type. Acquaintancehip with machines will spread, and will even accelerate the training of a large reservoir of workers, some of

whom will in time be attracted to urban industry as their skills and their tastes broaden. Thus the improvement of small-scale industry will conform to the slow rate of large-scale industrialization imposed by the limitations of capital and skills, of transportation and power facilities.

COMPLEMENTARITY OF LARGE- AND SMALL-SCALE INDUSTRY

Competition between the traditional and the modern sector of industry is sometimes cushioned by government regulation, in order to mitigate social disruption. We have seen in the preceding sections of this paper that small, decentralized industry has, under certain conditions, comparative advantages of size and location in competitive trade. There are also areas of cooperation, however, between large and small, urban and rural industries, as has been demonstrated in Japan. Small shops may make accessories for large factories, cheaply and efficiently, where machinery is standardized and parts are interchangeable. Thus operations that justify large-scale equipment can be done by big plants, while others are left to small shops which fit into certain stages of the production process. As an alternative, small enterprises can combine in cooperatives or associations to gain the benefits of large-scale industry in certain operations. By means of such lateral combinations and forward or backward integration, independent units can parallel advanced types of modern industrial organization.

Summary and Conclusion

The experimental nature of this study has permitted us to shift our emphasis from one to another level of argument. Thus at the beginning we touched upon certain points of historical analogy; we proceeded to a description of salient features and development trends of small and rural industry in the Far East today; and finally we presented several analytical considerations that have a bearing on the eventual determination of priorities and other policy decisions regarding the size, location, and tech-

nological level of new industries and improvements of existing facilities.

It is unquestionable that essentially, and in the long run, small industry can survive only if it can pay its way economically. But the considerations in the foregoing pages point toward a conclusion that small industry in underdeveloped countries certainly has short-run advantages, and may even be able to pay its way over a longer period.

There seems little room for doubt that when capital is scarce in relation to labor, low capital intensity and comparatively low levels of technology are justified, since they mean a saving of capital cost in building, machinery, tools, inventories, and overhead expenditure. Small-scale enterprises have a clear advantage in the manufacture of products of high quality, and of products that are not standardized and are demanded in a variety of types, patterns, and finishes. Small establishments are favored, too, when small numbers or short lengths have to be made, and they have an advantage of flexibility in adjusting to changes in demand. The competitive position of small enterprises may be especially good in industries that are not adaptable to mass production by high-speed continuous processes. Where the wage component of total cost is relatively high, small-scale manufacturing has strong chances for survival.

Furthermore, small industries in the rural regions of underdeveloped countries have the important economic and social function of relieving agricultural underemployment and seasonal unemployment. Increase in local incomes from decentralized small manufacturing can spread the benefits of industrialization and help rural communities to rise above their present level. The integration of small industry into rural life is likely to increase total income all around, and thereby create a wider market for all industrial products. In fact, the narrowness of total effective demand as a result of small incomes is as much a cause of the decline of handicrafts as is the competition of the machine. Increased total demand would widen the market for both large-

scale and small-scale industry. And during the essential period of transition from subsistence to market agriculture, a local labor force can shift between farming and manufacturing, as seasons and demand dictate. Seasonally idle power facilities of agricultural processing plants can be used by conveniently located small industries. Indeed, the cooperation and mutual stimulation of agriculture and local industry are important elements of smooth transition.

These are some of the considerations that have been elaborated in this paper, but it should be borne in mind that we have been dealing here with objective aspects of the industrialization problem, rather than with the value positions that must underlie actual policy decisions. This paper has pointed out existent possibilities for a balanced development, one that would be slow and gradual and would produce a minimum of dislocation. But a diametrically opposite objective is also defensible: quick and far-reaching change, entailing a vast technological transformation and, with it, a radical break with traditional attitudes. The decision can be made only by the individual country, after a sober appraisal of available resources and of the social and economic cost of both courses; it must be made on the basis of value judgments as to what is to be maximized in the course of economic development. Short-run benefits need to be weighed against long-term gains; advantage in local competition against regional and national goals; transitional against permanent changes in organization; the potentialities of smallness against the benefits of bigness.

Actually, of course, no single method can initiate that "self-generating" process of continuous growth which is the aim of all development policy. The case for large industry has been stated more frequently than that for small, and we have here reversed that emphasis. But in doing so we have preferred not to think in terms of mutually exclusive alternatives. This is a problem of the relative, not the absolute, importance of small and large, light and heavy industry, of agriculture and "overhead projects"—

a problem of their relative importance in certain defined circumstances. Assuredly, purposeful development will have to push in many directions at once if it is to succeed at all.

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COMMENT ON KELSEN

BY BARNA HORVATH

AS NEW trends of legal thought crop up around Pure Theory of Law, the outstanding achievement of Kelsen is seen in better perspective, as are also both valid criticism of his thinking and independent new lines of legal thinking. I can treat here only a few lines of thought which seem to me particularly indicative of present theory as a "dialogue with Kelsen." This "dialogue" is serving to integrate Kelsen's doctrine into a larger framework of reference.

The fate of great systems of thought, always at the mercy of subsequent thinkers, varies from oblivion to scholastic orthodoxy or to unexpected new flourishing. But the situs of the inherited doctrine within the folds of succeeding ones is never the same as in the original frame of reference. The result of this change in climate of opinion is sometimes the stone-death silence of the new Neanderthal men, and sometimes a new creativeness in congenial minds.

Kelsen's ideas have impressed the best minds so vividly and lastingly that a succession in this latter sense seems to be assured. Yet much depends on how great the torsion by the respective frames of reference is. Perhaps the following pages will convey the impression that there is much in Kelsen's thought that cannot be lost in any new doctrine which comes up to his intellectual level, much that cannot be neglected with impunity. This is also true, however, of some of the new doctrines. Mutual adjustment is partly a matter of wisdom and partly of propitious chance.

Fundamental Legal Concepts: Form and Content

The idea that there are *fundamental* legal concepts, and that theory of law has to do only with them, played a considerable part with Hobbes, Austin, Stammler, Somló, Moór, and is defended

today by Haesaert.¹ Kelsen accepted this idea at one stage of his development,² but has since freed himself of it to a considerable extent. As a result, this limitation plays only a subordinate part in the final formulation of his doctrine.³ Nevertheless, it seems worth while to consider how theory of law has been affected both by the limitation to fundamental legal concepts and by the liberation from this limitation, as the latter may indicate one of the important turns in present legal thought.

"Fundamental" legal concepts were meant to be logically presupposed by all other legal concepts. They were also called "formal," "essential," or "presupposed" legal concepts.⁴ The difficulty was to distinguish them sharply from the merely general legal concepts which, even when universal, could never be "necessary." This distinction plays a different part, of course, depending on whether we move along the lines of formal, transcendental, or even eidetic logic, along the lines of legal positivism or natural-law thinking. In formal logic and legal positivism it looks like a strange residue of metaphysics and natural law. While natural law claims to be the necessary content, fundamental legal concepts claim to be the necessary form of the law.

¹ See Hobbes, *Leviathan*, in his *English Works*, ed. by W. Molesworth (London 1899-45) vol. 3, pp. 251-52: ". . . whatsoever can from this definition by necessary consequence be deduced, ought to be acknowledged for truth." See Austin, *Lectures on Jurisprudence or the Philosophy of Positive Law*, 5th ed. (London 1911) p. 1073: "Of the principles, notions and distinctions which are the subjects of general jurisprudence, some may be esteemed necessary. For we cannot imagine coherently a system of law (or a system of law as evolved in a refined community) without conceiving them as constituent parts of it." See also R. von Stammler, *Lehrbuch der Rechtsphilosophie*, 3rd ed. (Berlin 1928); Felix Somló, *Juristische Grundlehre* (Leipzig 1917); Julius Moór, *Bevezetés a jogfilozófiába* (Introduction to philosophy of law, Budapest 1923); Jean Haesaert, *Théorie générale du droit* (Brussels 1948) p. 43.

² See Hans Kelsen, *Allgemeine Staatslehre* (Berlin 1925) p. 5.

³ Kelsen, *General Theory of Law and State* (Cambridge, Mass., 1945); it is this work that is referred to in the parenthetical page citations appearing later on in the text in reference to Kelsen.

⁴ Somló (*op. cit.*) uses the terms *Rechtsformbegriffe*, *Rechtswesensbegriffe*, and *Rechtsvoraussetzungsbegriffe* in precisely the same sense as *notwendige Rechtsbegriffe* and *juristische Grundbegriffe*.

It is hard to see how necessary legal concepts may be found by means of formal inductive logic, whose operations are limited to empirical concepts, including those of the observable phenomena of positive law. Such operations yield useful general concepts. But they are useful only in so far as they save the effort of considering particular instances falling within their scope. They are unable to override a single particular instance that contradicts them. The general and the particular are mutually dependent. There is no way to obtain a general concept presupposed unilaterally by a particular one. Moreover, a correctly built general concept can be used only to discover the generic, never the specific, properties of the particular concepts falling within its scope.

Haesaert objects to this argument that it confuses historical and logical generalization.⁵ To be sure, the idea underlying the formulation of fundamental legal concepts seems to be that in progressing, by way of generalization, from the legal field to the historical or sociological we encounter a new kind of general concepts, broader in scope than legal ones, and therefore safe from uncertainties of lower-grade generalization within the narrower legal field. And indeed, investigation of the interplay of more general factors—historical or sociological—within the structure of law may add much to its knowledge. Moreover, the definition of law may be expressed in terms more general than law itself. This seems to point to the objection that even the specific difference of the concept of law may be found in the field of historical or sociological concepts, that is to say, in higher-grade general concepts than that of law.

Yet this very definition is at the mercy of legal experience, or empirical legal concepts, instead of these latter being at the mercy of the supposedly “fundamental” legal conceptions. Although the several single concepts, put together in the definition, may be sociological, their combination and the emphasis on the specific

⁵ The argument was elaborated in my “Die ungarische Rechtsphilosophie,” reprinted from *Archiv für Rechts- und Wirtschaftsphilosophie*, vol. 24 (1930) pp. 61–66; see Haesaert, *op. cit.*, p. 49.

difference refer back to particular legal phenomena, and render the definition subject to verification by particular legal experience and empirical legal concepts. The concept of Law, as the most general legal concept, cannot contain, therefore, anything but the common features of all particular legal phenomena. Similarly, the general concept of Man contains only the common features of all particular men. This is true of all general concepts, provided they are obtained inductively, by way of generalization, from empirical instances.

What can not be achieved in this way is precisely that "relative a priori" which fundamental legal concepts claimed to be, as contrasted with merely general ones. Within the realm of induction, empiricism, and generalization, there is no room for a priori, because general concepts are a posteriori, their verification consisting in their empirical instances.

We may safely conclude, therefore, that the higher logical dignity of fundamental, essential, or necessary legal concepts is beyond the reach of empiricism, induction, and positivism. We may suspect, conversely, that any claim to such fundamental concepts implies or hides some transgression of the limits of empiricism, positivism, and formal logic. It amounts to the discovery of the Kantian-Stammlerian invariable "forms of thought" (subjective a priori) or of the Platonic ideas or eternal objects, in which phenomena only "participate" (objective a priori). Once the limitations of inductive method and positivism are broken through, however, the way is open to reach not only the necessary form but also the necessary content of law. Fundamental legal concepts are a midstage between legal positivism and natural law.

The very title of Kelsen's *General Theory of Law and State* suggests that he has succeeded in escaping these embarrassing implications of a sharp distinction between fundamental and merely general legal concepts. Though he retains the term, its meaning is radically reinterpreted. His fundamental concepts result from "a comparative analysis of the different positive legal orders"; they are built for the sole purpose of description; and

they are derived "exclusively from the contents of positive legal norms" (pp. xiii-xiv).

This is clearly an improvement on the idea of fundamental concepts. On the one hand, Kelsen's legal concepts are obtained by the inductive method, and accordingly claim to be merely "general" legal concepts. On the other hand, they are concepts of the content of law: were they proved, by some other method, to be "necessary," they would amount not to the essential form but to the essential content of law. Compared to the "midstage" of old-style fundamental legal concepts, these new-style ones imply concessions both to empirical positivism and to natural law. The latter concession is perhaps not intended, but it is a great merit of Kelsen that his interpretation is so elastic as to leave a door open even for that "necessary content of law"—the very definition of natural law—which in his critical self-restraint he had to discard from his investigations.

It is fairly obvious that many points of Kelsen's theory do not concern fundamental legal concepts in the strict, old sense at all. For instance, legal responsibility, as distinguished from legal duty, to the extent to which it refers to a delict committed by another individual, is not a necessary legal concept, any more than legal right "as a specific legal technique" is, according to Kelsen's assumptions. Moreover, his whole nomodynamics seems to fall outside the field of fundamental concepts, as it is assumed to furnish "only apparently a concept of law." Nor is his theory of the state, as a national legal order, concerned with fundamental *legal* concepts, any more than that of international law is, because they deal only with particular branches of law or kinds of legal order and community. The real advance beyond the formalism of fundamental theory of law, limited to the definition of law and its logical consequences, is seen in his statement that law cannot be defined by the difference between legal and other norms alone, but only by the specific nature of its "empirical manifestations," their determination and interrelations (p. 181).

This is a new departure. It originates in Kelsen's interest in

specific branches of law. He is an expert in constitutional law and international law. Of course, fundamental concepts of a particular branch of the law are not necessary concepts of all law. They may even derive from the (varying) content of another branch of the law. For instance, the elements of the state are dealt with by Kelsen as so many questions of *international* law (territory, boundaries, birth and death of the state, recognition, succession of states, state servitudes, nationality, exterritoriality). This means that subject matters of a *general* theory of constitutional law, its fundamental or necessary concepts, are at the same time subject matters of the *content* of international law. The advance from formal to material concepts is most clearly seen in the relevance, to a general theory of law, of such subject matters of the theory of particular branches of law. It is perhaps most conspicuous in the "juristic definition of the state," implying also a definition of the essential function of international law (p. 351).

These "empirical manifestations" of positive law, though by no means fundamental or necessary concepts of all law, are regarded by Kelsen as indispensable to the definition of law: law must be defined by these as well as by the specific difference between legal and other norms. To the skeleton of a definition by genus proximum and differentia specifica, flesh and blood and color are added by what is only contingent in law, what is only "possible law." The varying content of law, not strictly necessary or fundamental but merely one of several equally possible alternatives, may be more characteristic of law than its supposedly necessary form.

Nomostatics and Nomodynamics

Nomodynamics is certainly the more remarkable part of Kelsen's general theory of law. It contains the doctrines of delegation, the hypothetical basic norm, and the hierarchy of legal norms. Nomostatics, on the other hand, deals with the usual questions of the definition of law, its elements and logical consequences. Only nomostatics, however, is concerned with fundamental legal

concepts in the old sense. The extent to which Kelsen has gone beyond these concepts is evident in his contention that the dynamic concept of a legal order is "only apparently a concept of law" (p. 122). It does not point to any criterion which distinguishes law from other social norms. It only decides whether a certain norm belongs to a system of valid norms.

From this it is clear that nomodynamics has little to do with fundamental or necessary legal concepts in the old style. Yet Kelsen seems to underrate the significance of his own discovery when he disavows the ability of his dynamic concept to furnish us with a full characterization of the law.

To be sure, the dynamic and positive character of law requires only the basic norm, as hypothesis, and another norm, delegated by the basic norm and created by special act of will. To satisfy Kelsen's assumptions as to the "specific reality of the law," distinguished both from natural reality and from metajuridical "justice" or natural law, only the basic norm, as juridical hypothesis, and an act of will (creating the positive norm) are required. The "togetherness" of this (basic) norm and (norm-creating) fact is sufficient to produce a positive legal rule, delegated by the basic norm and established by the act of will. The whole legal hierarchy of norms which may develop out of this simple dynamic structure is, I admit, only possible, not necessary.

Nevertheless, this hierarchy of legal norms may turn out to be one of the principal ways of institutionalization, and as such one of several, equally possible, alternative characteristics of law. As will be seen below, even the static concept of law refers to acts, organs, agents that apply the norm, in other words to nomodynamics. It is true that the dynamics of a given legal order, as seen from within, determines only whether a certain norm belongs to that order, as brought about in the way prescribed by its basic norm. As seen from without, however, the dynamics of the given legal order exhibits one of the characteristic features of legal systems, a series of delegated acts serving their elaboration and application.

The hierarchy of legal norms is a vertical series. There is also a horizontal series, consisting of legal conditions and their legal consequences, linked together by another pervading function discovered by Kelsen: imputation. For it is another alternative characteristic of law that the ultimate consequences or sanctions—in Kocourek's term the zygnomic (enforcement) relations⁶—are delayed and preceded by a long series of intermediate—in Kocourek's term mezonomic—relations. And finally, at the junction of the vertical and horizontal series, permanently functioning organs may develop and crystallize into an apparatus of procedure.

Law may institutionalize in any of these three ways, and, seen from without, it may be characterized as the most developed or institutionalized social procedure. There will be found few, if any, instances of law which might not be distinguished from other norms by longer series of delegated norms, or by longer series of consequences imputed to conditions, or by organs functioning more permanently. Nomodynamics, accordingly, may have a significance even greater than Kelsen is inclined to admit.⁷

Definition of Law

This conclusion is borne out by the fact that the static concept of law refers to, and is supported by, the dynamic one. Kelsen distinguishes law from morals as "a measure of coercion enacted by the order, and socially organized" (p. 20), and from religion as carried out by "an agent of the legal order . . . an organ of the community, constituted by the legal order" (p. 21). These formulations point from nomostatics, where the coercive character of law is taken for granted, to nomodynamics, where it is scarcely

⁶ Albert Kocourek, *Jural Relations* (Indianapolis 1927).

⁷ This line of comment has been elaborated by the writer in his *Rechtssoziologie* (Berlin 1934). Perhaps it may be added to the above outline that the dynamic structure of procedure differs from Kelsen's nomodynamics in that it represents the "togetherness" of behavior pattern and actual behavior complying with it. This adds to Kelsen's nomodynamics, concerned only with norm-creating acts, the law-abiding acts which turn the dead letter into living law. Kelsen cares for positiveness of the whole legal order, by and large; in my view, every single rule is law only to the extent that, and in the shape in which, it is the pattern of actual behavior.

granted at all, as a result of the fine distinction made by Kelsen between the "ought" to perform a legal duty and the "ought" to apply the sanction (p. 60). As the former is the epiphenomenon of the latter, and as this latter ultimately derives from a non-coercive norm, the whole coercive static legal order seems to be the epiphenomenon of the non-coercive dynamic legal order. This is a consequence of the fact that law regulates—in a non-coercive way—its own creation and application.

There are other differences between Kelsen's definition of law as a coercive order and the usual imperative theory. But whereas the reference from static to dynamic concept points to the positivistic trend of thought, other qualifications point in the opposite direction. The first trend, to be sure, is fortified by such logical-technical devices as the basic norm, the general res judicata effect, legal infallibility, and alternative delegation, calculated to ease "the transformation of power into law" (p. 437), to reconcile norms to facts to a degree where the first are merely copying the latter. This trend finds its limit in the denial, in the world of law, of any facts other than those ascertained in a legal procedure (p. 136). This means that in the mills of pure theory of law, facts are ground to contents of acts and norms.

Here the opposite trend sets in. Law is "monopolization of the Use of Force," which "pacifies the community" (p. 21). Furthermore, "the effectiveness of the legal sanction is . . . [no] part of the concept of law" (p. 23), and coercion is a "problem of the content of the rules" (p. 29). Consequently any attempt to describe the specific meaning of legal rules in terms of actual behavior of men must fail (p. 37). This meaning can be grasped only by means of the de-psychologized ideas of norm and ought.

The severance of norm and fact elements is so strong that a definition of law with reference to actual coercion—physical or psychological—seems to be excluded. This means that coercion as the content of legal rules has hardly more than a purely semantic or logically ordering function, pointing to the clear disjunction of legal and illegal coercion. Perhaps this logical classification

of all social coercive acts as either delict or sanction is meant by Kelsen as the inmost function of law: the pacification of society. This fine and subtle idea has been devised to explain primitive and international law, where long series of delegation and imputation, hierarchy of norms, and permanent organs may be lacking. It has been devised, especially, to utilize the *bellum iustum* doctrine as a proof of the legal character of international law. Where dynamic interpretation fails, recourse is taken to a static concept of law.

This static concept of law describes a state of affairs in which no coercion may be suffered except as delict or sanction. This is the rule of law, or supremacy of law, as formulated by Dicey.⁸ This doctrine can be traced far back to the Middle Ages and to antiquity, in the general form that law means the rule of abstract principles, not of men. The reverberation of this idea is unmistakable in Kelsen, who holds that "a state of law . . . is essentially a state of peace" (p. 23), and thus claims for law a necessary content.

Peace, however, has so many aspects that what is peace under one aspect may be war under another. Peace depends on justice and freedom to such an extent that it is hardly less elusive than they. The very assumption that law is essentially concerned with peace, in preference to freedom and justice, is a choice, based on practical principle, breaking through empiricism and fundamental legal concepts (or necessary form) into the very heart of natural law (or necessary content of law).

We may admire, indeed, the wisdom of a definition that satisfies both the imperativists (in its wording) and the adherents of the venerable doctrine of supremacy of law (in its meaning). It sustains both the static and the dynamic concepts of law, each reenforcing the other. It offers useful tools to those who are bent on "transforming power into law," as well as to their opposite numbers, who want to transform principles into working insti-

⁸ A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (1885, 8th ed., London, 1915, reprinted 1923) pp. 183-91.

tutions. Its chief asset is this elasticity, which makes it possible to extend feelers toward, and restore contact with, trends of thought from which Kelsen refrains in his purist moderation.

Contemporary Comment

ANALYTICAL: LEGAL RELATIONS

It is an outstanding merit of Kelsen's to have offered a "monistic" interpretation of the interrelation of objective and subjective law, and to have looked behind the veil of legal personification. Lack of space prevents me from reviewing or criticizing here his analysis of subjective legal relations. I merely wish to point to some developments which, while taking advantage of his achievements, go beyond his position.

Kelsen reduces subjective to objective law. Since objective may be reduced to subjective law, as well, it would seem preferable to identify each by the other. Nothing remains of a legal rule after it has been dissolved into subjective relations. The rule is the *average* (generalized) formulation of subjective relations which, in their turn, are relations of legal rules to *supposed* subjects.

Furthermore, we get a better explanation for the split between legal duty and responsibility, and for the apparent lack of correlation between legal right and duty, if we distinguish, in the complex structure of right and duty, the elementary relations of claim and obligation (norm element) from those of capability and liability (fact element). Full legal authority means claim plus capability. But authority may be defective because of lack of capability, and yet work to satisfaction (as in the delivery of ordinary mail). Objective legal chances, as it were, may replace capability. The latter turns out to be itself a (spontaneous) legal chance, the happening of which depends on ourselves. Legal chances and risks seem to engulf all other legal relations, which ultimately resolve into such remote and diffuse chances as legal order and general security.

On the other hand, it seems to be of more than theoretical significance that out of this primeval fog of diffuse chances full legal rights and duties should crystallize. The severing of claims from capabilities may also be very inhuman, as is only too obvious from the example of totalitarian systems. To have pointed to such inhumanity, in the instance of collective responsibility—to have pointed out unmistakably that human beings alone are the subjects of rights and duties, even behind the veil of legal persons—is another of Kelsen's great merits.

The investigations of Hohfeld and Kocourek have paved the way for the analysis of legal relations along these lines, although the separation of norm and fact elements is not always carried through. I may mention here that Szászy has elaborated the system of private law along the lines of Kocourek's classification of legal relations.⁹

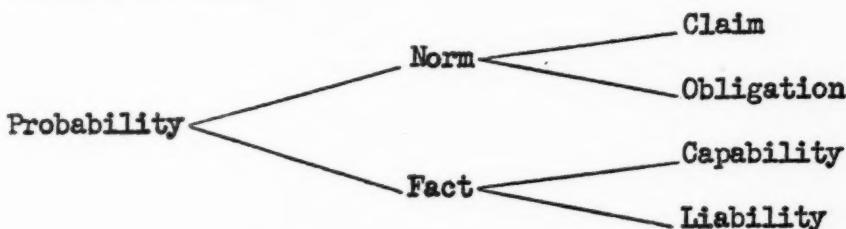
It may be that in the wake of analytical investigations, methodological dualism is brought nearer to a satisfactory solution. It appears that all legal relations are wrapped in the matrix of objective chances. The distinct claim and capability of any creditor are nourished, ultimately, by the diffuse chance that courts, particularly superior and supreme courts, decide cases according to law. Such chances may be formulated as both diffuse claims and capabilities, as both subjective and objective, because they are as yet indifferent to the separation of norm and fact, or to that of subjective and objective elements.

Chances are probabilities, such as those that apply to logical, mathematical, and any other kind of validity, as well as to reality. They are fractions, percentages of the certainty of knowledge, whether of norms or facts—with certainty amounting to hundred percent probability.

Within this matrix, first the undifferentiated probability is split up, or fissioned, into separate norm and fact elements, and second, each of the latter is split up, or fissioned, into correlative

⁹ István Szászy, *A magyar magánjog általános része* (The general part of Hungarian private law), 2 vols. (Budapest 1947-48).

subjective relations. The following chart gives a picture of this all-important process.



Legal rights, in the strict classical sense, may be analyzed by this method in a way strikingly illustrative of Kelsen's pivotal methodological principle: the separation of norm and fact. Legal rights, in this view, are long chains of concatenated claims and capabilities. Each claim in this chain arises from a former claim, its *conditio per quam*—but only by means of an intervening exercise of a capability, its *conditio sine qua non*. The same is true of each capability within the chain. Each of these arises from a former capability, but only by virtue of an intervening frustration of a claim. Claims and capabilities, obligations and liabilities, are intertwined in the sense that they release each other through the intervention of the actual happening of chances.

Classical legal rights are characterized, moreover, by the fact that every new claim and capability in the chain is directed against someone foreign to the former legal relation (turning from the debtor to the judge of first, second, and last instance). These new subjects of obligation and liability may be organized in a way to free them from all other obligations and liabilities except remedial ones. Independence of the courts means that their duties are exclusively remedial.

In this sense, a legal right is a chain of foreign and exclusively remedial claims and capabilities, releasing each other. Thus Kelsen's clear methodological postulates enable analysis to discover in the elements the principles of construction pervading the complex whole.¹⁰

¹⁰ See the author's *A jogelmélet vázlata* (Outline of theory of law, Szeged 1937).

FUNCTIONAL: IMMANENT STANDARDS

Niemeyer, aware of the crisis caused by the methodological dualism of fact and value, tries to decipher that inherent meaning of social reality in which "spirit and nature converge into culture,"¹¹ and by which the full vigor of a "law without force" may be restored. His attempt is highly characteristic of the trend pushing toward legal content (as distinguished from formal fundamental concepts) and guiding practical principle. He finds both in the "social sense of an institution," which "derives from the transpersonal effect to which the institution is coordinated with empirical regularity."¹²

By this he means that the standards for individual behavior are immanent in the *raison d'être* of an institution: "an individual has to will them or he has to refrain from them altogether,"¹³ whether he is a member of a riding school, a fire brigade, a General Staff, or a church hierarchy. Law, accordingly, does not command or restrict social forces. It provides the channels in which social relationships can mature.

Despite some difficulties which such a view entails—the shadow it casts on individual liberty, the uncertainty inherent in the choice between transpersonal means no less than ends, and in discovering standards of behavior immanent in swiftly changing institutions—the basic idea is not negligible. Loyalty to any institution facilitates the discovery of immanent standards, and participation in transpersonal ends implies participation in a going concern.

POSITIVISTIC-PSYCHOLOGICAL: LEGAL REALITY

Haesaert defines "the juridical" as the organization of human synergies according to a particular mental attitude of the parties concerned,¹⁴ impressing on it the character of unconditional

¹¹ Gerhart Niemeyer, *Law Without Force* (Princeton 1941) p. 251.

¹² *Ibid.*, p. 261.

¹³ *Ibid.*, p. 262.

¹⁴ Haesaert, *op. cit.*, p. 195.

obligation, confirmed by the social community concerned. It is at least doubtful, however, that a "system of synergies" (or concerted effort) may always be found at the background of law. Such systems, we are told, have a "mother idea" (*idée mère*), "instruments," and "lines of force" (*lignes de force*), whereas law is concerned also with less complex situations. One wonders, too, whether "unconditional obligation" is the necessary form of anything legal, for social obligation (reputation, honor, friendship, chivalry) may sometimes prevail over the feeling of legal obligation.

Nevertheless, this definition, though hardly a "fundamental legal concept," makes good sense as an "ideal-typical" one. It sums up vast legal experience in ingenious psychological types. Law certainly has something to do with "systems of synergies," being itself institution and institutionalization. It also has to do with that "opinio necessitatis" of which "unconditional obligation" seems to be a paraphrase. I should like to emphasize, too, Haesaert's fine idea that law is born with the first relaxation of arbitrary power, a relaxation that gives rise to the feeling of "unconditional obligation." This inverted coercion theory is gaining ground in many quarters, and in two stimulating monographs Haesaert, brilliant critic of the usual coercion theory, has applied his own theory also to international law.¹⁵

Both Niemeyer and Haesaert rely on the idea of institution, a working structure of ends (*raison d'être*) and means (instruments, lines of force). Haesaert's concept is reminiscent of Stammler's "unverletzbar selbstherrlich verbindendes Wollen" (inviolably self-governing binding will).¹⁶ But whereas Stammler's concept was meant as transcendentally conditioning (*bedingend*), Haesaert's is meant as psychologically conditioning. This is a characteristic reinterpretation of "fundamental legal concepts,"

¹⁵ Jean Haesaert, "Préalables du droit international public," in Académie Royale de Belgique, *Lettres*, vol. 16, fasc. 3 (Brussels 1950), and "Les prétendus principes généraux de la politique internationale et du droit des gens," in *Bulletin de l'Académie Royale de Belgique* (1950) pp. 354-85.

¹⁶ R. von Stammler, *Theorie der Rechtswissenschaft* (Halle 1911) p. 109.

and is also the prevalent present trend in surmounting methodological dualism. Although Haesaert is not concerned with value-standards, whether immanent or transcendent, they seem to return in a psychologized form as *idée mère* and "unconditional obligation"—along with natural law, rejected in terms but hardly eradicated in substance.

EXISTENTIALIST: LAW AS HUMAN LIFE

Kunz has shown in detail the influence of Kelsen on such outstanding thinkers as Recasens-Siches and Cossio, among other phenomenologist-existentialist legal philosophers.¹⁷ They incorporate the pure theory of law in their own legal thought as part of a wider science or philosophy of law. They integrate it into a larger framework of reference. They have chosen, wisely, "to go beyond Kelsen without abandoning him."¹⁸

It seems to be obvious, indeed, that human life, in this school of thought conceived as a perpetual stream of decisions and evaluations, arches the gulf between subject and object as well as that between fact and value. To cut out law from this matrix, to separate it sharply from facts and values of human life, is, in this frame of reference, at best a temporary solution, to be surmounted by the restoration of the vital links connecting law with the whole stream of the full, unique, "authentic" human life.

Recasens-Siches proceeds on these lines with wise caution and moderation.¹⁹ So far as I can see, it is the gradual externalization of "authentic life" which accounts, in his thought, for the separation of law, as "objectivated" and "collective" human life, from ethics, conventional rules, and justice. On the other hand, the more externalized formations are "indispensable preconditions" for the more internal ones—legal security for justice, for example,

¹⁷ Josef L. Kunz, *Latin-American Philosophy of Law in the Twentieth Century* (New York 1950) pp. 100-06, 109-20.

¹⁸ *Ibid.*, p. 112.

¹⁹ Luis Recasens-Siches, "Human Life, Society and Law," in *Latin-American Legal Philosophy* (Cambridge, Mass., 1948). See also Emilio Menendez, *Nuevo Derecho* (Havana 1946) pp. 150-55.

and justice for authentic individual ethics. This accounts for the restoration of the unity of human life.

Cossio's "egological theory" carries in its very name the immanence, in any action, of the "practical transcendental subject" or the accompanying consciousness of "I act."²⁰ Egological objects are a class of cultural objects, the substratum of whose meaning is "the very conduct of man" (p. 346).

The first bold move, in Cossio's thought, is to think of law as "human conduct" in its intersubjective interaction, not as rules of conduct. These latter are merely the concepts of conduct, ideal objects. They are mastered by pure theory of law as formal juridical logic. Dogmatic science of law, however, "contains something beyond juridical logic" (p. 348)—is a science of "reality." Pure theory of law is welcome so far as it furnishes rules as concepts. To the needed concept of "existing ought-to-be," however, "axiological intuition" or "experience of liberty" must be added in order to obtain dogmatic science of law.

The second bold move concerns method. The object—a court decision, for example—is seen "from within as living," as this method "introduces the subject into the object" (pp. 249, 358). The object's "existence" consists in alternative sensory experience of the "material substratum" and intellectual experience of the "meaning" (p. 350). This is a "circular movement" which goes from the substratum to its meaning, and vice versa. In each turn, knowledge increases and the object is known better and better (p. 360).

The third bold move is the immanence of the judge in law, and the immanence of a material and necessary element in judicial experience. This element is order, security, peace, solidarity, justice. To these there is "always an immediate reference" in the decision (p. 375). Their meaning "is given in any datum as invariable material" (p. 275). It is a "constant content" because "the law is conduct." This invariable content "disappears with

²⁰ Carlos Cossio, "Phenomenology of the Decision," in *Latin-American Legal Philosophy* (cited above) p. 346.

law itself, neither before nor after" (p. 375). It follows that "juridical valuation is immanent in the law, and not something transcendental toward which the law would tend as toward its purpose" (p. 375).

This certainly goes beyond fundamental legal concepts as necessary form. "Invariable content" of law is the very definition of natural law. If Kunz is right that "Cossio has only made explicit what was already implied in Kelsen's doctrine,"²¹ he points to the same feature of integration into a larger framework of reference which has been recognized, in my introductory remarks, as a significant result of the contemporary comment on Kelsen. Pure theory of law, as it were, grinds facts and values to norm-content and norm-delegation by the logical mill of nomodynamics, while nomostatics yields such invariable contents as peace and monopoly of force (minimizing the use of force) as the essential function of law. This whole logical mill is wrapped, by Cossio, in the nylon cover of egological theory. Law is enfolded into the gentle tissues of living human life, with the result that "transcendent" values and facts become transparent in their "immanence" and are seen as feeding the logical mill. To change the metaphor, the melody of "living human life" resolves the discord of methodological dualism and furnishes the diapason for the concord of all elements of "intravital" law.

REALIST: DUALISM CONQUERED?

Kelsen himself has assumed leadership in pioneering adventures directed toward conquering the dualism of norm and fact. He launched the idea that as soon as the law of natural science is formulated as an assertion of statistical probability, instead of absolute certainty, "there exists no essential difference between natural and social laws."²²

A similar idea is made palatable for lawyers by Radin. We may know law, in a practical sense, only from cases which hap-

²¹ Kunz, *op. cit.*, p. 118.

²² Hans Kelsen, *Society and Nature* (Chicago 1943) p. 266.

pened in the past. But past facts are irretrievable. Certain statements of fact are made final, in law, by the res judicata effect. Law is compelled, by sheer practical necessity, to say it knows something it cannot know. As the facts are only probable, and law can be known only as applied to them, law itself is only probable.²³ This is a happy formulation of what every legal practitioner knows. The naive belief in legal certainty has been shaken also by the wholesome skepticism of Holmes, Cardozo, Frank, Robinson, and Arnold, who have prepared the way for turning legal positivism into probabilism.

I still hold that the dualism is explained most conveniently in a critical-subjectivistic way, giving it a Copernican turn.²⁴ Arnold's "satirical" method, Llewellyn's penetrating analysis of the ways of tribal justice, and Yntema's sound remarks on realism and its critics²⁵ support the opinion that this new realism is fighting, above all, against isolation of legal learning, and for its integration into a wider frame of reference, neutralizing contradictions in earlier doctrines.²⁶ The widest and most convenient frame of reference is, within this trend too, the critical-skeptical subjectivist frame. Its chief advantage is that the equipoise of fact and norm is preserved: they are not reduced one to another, but are produced by a third factor. Yet I fully appreciate the warning of Roscoe Pound's against practical skepticism.²⁷ That theoretical or "academic" skepticism may be directed toward the full assurance of practical principle, instead of toward wavering

²³ Max Radin, "Ex facto ius: ex iure factum," in *Interpretations of Modern Legal Philosophies, Essays in Honor of Roscoe Pound*, ed. by Paul Sayre (New York 1947) pp. 578-88.

²⁴ See my "La réalité, la valeur et le droit," in *Travaux du IX^e Congrès International de Philosophie*, vol. 12, *Congrès Descartes* (Paris 1937) pp. 42-48, and "Recent Developments in Legal Thought," in *Library of the Xth International Congress of Philosophy*, vol. 1 (Amsterdam 1948) pp. 401-03.

²⁵ Thurman Arnold, *The Symbols of Government* (New Haven 1935); Karl N. Llewellyn, *The Cheyenne Way* (University of Oklahoma, 1941); Hessel E. Yntema, "Jurisprudence on Parade," in *Michigan Law Review*, vol. 39 (1941) pp. 1154-81.

²⁶ See my *Angol Jogelmélet* (English theory of law, Budapest 1943) pp. 574, 606.

²⁷ Roscoe Pound, *Contemporary Juristic Theory* (Claremont Colleges, 1940) pp. 10-11, 75-76.

loyalty, was seen by Hume, who went to the length of calling justice—in his opinion an artificial virtue—by the name of natural law.²⁸

Since the war the more naturalistic trend of Scandinavian legal realism has been moving, too, in the direction of reconciliation with "notions of validity," instead of "spiriting them away." Ross no longer considers his earlier solution, the combination of causal and normative methods, to be tenable. The "sting of the problem," formulated in his first antinomy, is that a consideration of law as fact "will necessarily change into a consideration of it as validity, and the reverse."²⁹ Ross, instead of "looking down the endless vista of parallel mirrors" (p. 73), finds the solution, this time, in a current of "inductive interaction" between interested and uninterested behavior attitudes, a current reminding him of "the forces causing a river to wind" (p. 83). Interested impulses, "more precisely determined as an impulse of fear of compulsion," account for the fact element in law, while uninterested impulses "having the stamp of validity" account for the norm element in law (p. 78).

It is remarkable that Ross emancipates himself from the power theory to a considerable extent,³⁰ and explains the connection between law and compulsion by the fact that "the feeling of legality" develops "in interaction with a system of compulsion," both of which "are only abstract aspects of the total legal phenomenon" (p. 112).

The idea that "the specifically legal notions of validity merely exist as integral elements of an actually maintained system" (p. 120), in connection with the recognition of the "significant function" of law in "building up societies, creating peace, and uniting," serves to explain that, in a sense, "law is an end in

²⁸ Hume, *A Treatise of Human Nature* (London 1739-40): Book III, *Of Morals*, Part 2.

²⁹ Alf Ross, *Towards a Realistic Jurisprudence* (Copenhagen 1946) p. 73.

³⁰ "And 'actual power,' independent of the law and primary, is merely a myth. 'Power' is only what it is through institutions and organisation, i.e. through the law" (*ibid.*, p. 59).

itself" (p. 116), and introduces the further admission that there is a "real meaning of the concept of justice" (p. 145). On account of the "purely formal claim for equality which merely expresses the tendency of the law to regularity," law is "an attempt at a realization of justice" (p. 145).

Along these lines law may be distinguished from arbitrariness. Although "free" and "natural" factors "are the protoplasm from which the nucleus of the fixed sources has become separated and from which it constantly draws nourishment" (p. 153), factors of motivation which are "exclusively the expression of the individual attitude of the judge, are not experienced as bearing the stamp of legal validity and are not, therefore, regarded as a source of law" (pp. 145-46).

It will readily be admitted that this is a considerable improvement on certain cruder types of realism. The question is only whether the improvement is due to the reduction of validity to an "epiphenomenon of reality," or to its treatment, in spite of such reduction, as almost or quite independent. The weakness of every genetic explanation of the "feeling" or of "notions" of validity is that we tell the judge in vain he "ought" to decide as he "will" decide. "Prophecies as to what courts will do" are rational but not practical, whereas "impulses" are practical but irrational (emotional). Knowable practical principles lie somewhere in between. "Res," in law, is principle no less than fact, and Llewellyn has shown the "persuasiveness" of the legal "wisdom" in primitive law-ways of a juristically gifted tribe to be essentially the same as "the sweet flowering of the classical juris-consult."³¹ It is the calm, quiet light of reason, of happy inventiveness which disarms because it satisfies seemingly irreconcilable impulses or interests. There is no high legal culture to be found without a fair balance of critical rationalism and critical empiricism.

Kelsen started his scientific career by claiming for law a sovereign sphere of validity, and he still warns us that the specific

³¹ Llewellyn, *op. cit.*, p. 313.

meaning of legal rules cannot be expressed in fact propositions, but only in terms of "ought."³² It is the highest tribute to his paramount methodological idea that contemporary comment is chiefly concerned with reconciling realism with traditional dualism.

Even if Kelsen stops short of discovering the substance, he preserves the form of rational legal principle. He has never yielded to any kind of irrationalism or emotionalism. Were he to elaborate a "general theory" of all branches of law, as he has already elaborated the theory of constitutional and international law, his doctrine would remind the reader of the classics of natural law rather than of any kind of legal irrationalism.

We should not seek to conquer dualism at any price. A conquest which spirits away the full meaning of practical principle is of no avail to the lawyer. A genetic or logical³³ explanation of the "ought" may be correct as far as it goes, and yet be of little use for purposes of legal thought. We may explain the emergence of dualism, but this does not mean that norms become facts, or that objects become subjects, or that reason becomes experience. The advantage of a critical, instead of a naturalistic, solution lies precisely in this: it preserves the balance, makes transition easy, and does not destroy what it has merely to explain.

³² See his "Causality and Imputation," in *Ethics*, vol. 61 (1950) pp. 1-11.

³³ Felix Kaufmann, *Methodology of the Social Sciences* (New York 1944) p. 210.

WAGE-FIXING BY COMPULSORY ARBITRATION

The Lesson of Australia

BY BENJAMIN H. HIGGINS

THE Commonwealth of Australia has probably accumulated more experience with the control of labor-management relations through compulsory arbitration than any other country. The Commonwealth Conciliation and Arbitration Act of 1904 was one of the first major pieces of legislation passed by the new Commonwealth government after its establishment in 1901. This act, moreover, was preceded by similar legislation in the states of Victoria (1896) and New South Wales (1901). The states of Tasmania (1910), Western Australia (1912), and South Australia (1920) all passed compulsory arbitration legislation within a few years of the Commonwealth act.

In terms of the proportion of the labor force and the aspects of labor contracts covered by court awards, the scope of compulsory arbitration in Australia is remarkably wide. Nearly two-thirds of the gainfully occupied persons in Australia are unionized, and the arbitration courts' rulings determine the conditions of work for the great bulk of wage- and salary-earners in the whole country. And while the earlier awards of the courts were relatively simple, confined to wage rates and the more important conditions of employment, the typical award of today is extremely complex. Awards usually include provision for the basic wage for unskilled male and female adult workers; for the minimum margins for semiskilled and skilled workers, male and female, according to their classification; for the minimum rates for piece workers, casual workers, and junior workers of both sexes; for adjustment of wage rates to cost of living; for allowances peculiar to the industry; for extra remuneration governing overtime, after-

noon and night shifts, Sunday and holiday work; and for the standard hours to be worked, with holidays and annual leave.

Because of the length and breadth of experience with compulsory arbitration in Australia, the experience of that country is of particular interest, and may indicate problems that would be faced by other countries extending the scope of legal regulation of labor-management relations.

The Arbitration Courts

It should be noted that the original federal legislation is entitled "The Commonwealth Conciliation and Arbitration Act," and that the Court accordingly bears the name of Commonwealth Court of Conciliation and Arbitration. Among the seven chief objectives enumerated in Section 2 of the original act are, first, "to provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties," and second, "in default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court by equitable award." Of course, where there is no dispute between labor and management, the terms of a labor contract do not come to the attention of the Court. When an agreement is reached at a compulsory conference between the parties to a dispute, the act requires that the terms of the agreement be submitted to the Court, and such a memorandum, when certified by a judge or a conciliation commissioner, has the same effect as an award made by the Court as arbitration.

The existence of "compulsory arbitration" in Australia does not mean that strikes are illegal. Non-compliance with an award is illegal, and an arbitration court may rule that a particular strike constitutes non-compliance with an award. In that case fines may be imposed upon the striking union, and, as a final sanction, the union may be de-registered. De-registration of a union, which removes its members from the protection of the arbitration courts, has been regarded in Australia as a strong measure, reserved for flagrant non-compliance. Most trade-union

leaders seem to feel that de-registration seriously weakens the bargaining power of a union, perhaps because it results in splits between workers wishing to remain within the Australia Council of Trades Unions (the national federation) and those who are willing to trust to the bargaining power of the union acting in isolation. As a rule the awards of the courts have been accepted by all parties without question.

The jurisdiction of the Commonwealth Court is limited to disputes affecting industries engaged in interstate trade; other industries are covered by state arbitration courts.¹ Under the 1947 act, the scope of the Commonwealth Court is restricted to such broad issues as the basic wage, standard hours, paid annual leave, and minimum wages for adult females. The same act abolished appeal to the High Court on these matters, and provided for the appointment of permanent Conciliation Commissioners, who must first attempt conciliation of disputes, but who may also make binding arbitral decisions in matters not handled by the Commonwealth Court, including margins for skill.

Neither the Commonwealth Court nor a state court can make an award dealing with a matter that is not in dispute, but the courts are not limited to granting or refusing what is asked by one side or the other. Section 38.b of the Commonwealth Act has been interpreted by Mr. Justice Rich to mean that it "enables the Court to give relief although not claimed." It is not always clear whether a dispute is interstate, and consequently the power of the Commonwealth Court can be challenged by application to the High Court. The Commonwealth Court has powers to summon witnesses, to order interrogatees to produce books and documents, to refer matters to experts and accept their reports as

¹ In Victoria the state courts are called Wages Boards; there are some two hundred of these, with five to eleven members each. Tasmania has about sixty Wages Boards. In New South Wales there is an Industrial Commission, comprising six Justices, aided by some 325 Conciliation Committees, each with a Conciliation Commissioner as chairman. In South Australia there is an Industrial Court, aided by Industrial Boards; in Western Australia, a Court of Arbitration, with three members; in Queensland, an Arbitration Court, composed of a Justice of the State Supreme Court and two others.

evidence, to enter at any time during working hours any building, mine, ship, or other premises where industry is carried on. It now has four full-time members: the Chief Judge and any two others constitute a Full Court, to deal particularly with basic-wage and standard-hours cases, leaving the fourth judge free to hear ordinary disputes.

Judges in the Commonwealth Court must be barristers or solicitors of the Supreme Court of Australia or of the High Court of a state, and of at least five years' standing. The main function of the Court is regarded as being the settlement of disputes in such a way as to permit industry to carry on successfully. In actual fact, however, the determination of what settlement will enable industry to be carried on to the best advantage of those engaged in it, and also be consistent with the public interest, has involved the Court in all manner of ethical, social, and economic considerations.

The Social Philosophy Underlying the Basic Wage

The Arbitration Court is one of the key institutions in the Australian welfare state, and the operation of the Court cannot be fully understood without some appreciation of the underlying Australian social philosophy. Professor Hancock formulates this philosophy as follows: "The ideal of 'mateship' which appeals very strongly to the ordinary good-hearted Australian, springs, not only from his eagerness to exalt the humble and meek, but also from his zeal to put down the mighty from their seat. If ever the ship of Australian democracy enter the calm waters of its millennium it will carry a fraternal but rather drab company of one-class passengers. . . . This, then, is the prevailing ideology of Australian democracy—the sentiment of justice, the claim of right, the conception of equality, and the appeal to Government as the instrument of self-realisation."²

"Productivity ethics" is accordingly rejected as a basis of decisions of the Court. Speaking specifically of the Arbitration

² W. K. Hancock, *Australia* (London 1944) pp. 63, 64.

Court, Professor Hancock says: "Australian democracy has done much to equalise opportunities, but it has also done something to narrow them. It is properly anxious that everybody should run a fair race. It is improperly resentful if anybody runs a fast race. Indeed, it dislikes altogether the idea of a race, for in a race victory is to the strong. Its solicitude is for the weak, and its instinct is to make merit take a place in the queue."³

This egalitarian attitude is reflected in various judgments of the Arbitration Court. Mr. Justice Higgins, in the basic-wage inquiry case (37 CAR p. 593),⁴ condemned industries that could not afford the basic wage as parasitic, not entitled to exist in the Australian economy unless Parliament deliberately chose to subsidize them in the national interest, to permit them to pay the basic wage and remain in operation. Mr. Justice Beeby, in the Main Hours Case (24 CAR p. 899), chastised those who regarded wages as a "burden on production." Mr. Justice Foster, in his judgment on the 1949 case, voiced the typical Australian attitude in still more clear-cut terms: "Is it unfair or inequitable to place an additional burden upon a section of the community in order to achieve what all regard as desirable—a higher working class living standard? The conclusion is one of judgement based on data that change as you write. . . . Every progressive state must contemplate and expect steadily rising standards for its people."⁵

But the Australian social philosophy of "protection" and "a fair go" extends to management as well as to labor, a fact that is also reflected in decisions of the Court. Thus Mr. Justice Beeby has stated: "this Court . . . is not a nursery for the propagation of economic theories. The present economic system accepts labour, capital and management as three distinct factors in production and propounds that prosperity with improved standards of living mainly depends on the harmonious cooperation of those

³ *Ibid.*, p. 153.

⁴ "CAR" stands for Commonwealth Arbitration Reports.

⁵ On p. 19 of the mimeographed version. It should perhaps be added that the early development of the basic wage arose partly from the wish to protect the working-class family from the insecurity and misery suffered in the 1893 crash.

factors" (24 CAR p. xlvi). Similarly, Chief Justice Dethridge stated in the Pastoralist Case, "what this Court is concerned with is the immediate need of settling disputes as to concrete needs in a particular industry, not only, however, in such a way as to prevent stoppages, but also upon such conditions as will not prevent it from being carried on successfully for the welfare of the community" (29 CAR p. 266). The same judge stated in another case that the maintenance of industry is the "final object" of the Court (29 CAR p. 468).

The Courts and the Wage Structure

The writer of this paper is not an expert on the legal history of compulsory arbitration in Australia, and will confine his attention to that part of the functions of the Court with which he has first-hand experience: the control of the wage structure. For workers engaged in industries operating interstate, the Commonwealth Court determines a basic wage and the Conciliation Commissioners determine margins for skill. In general, margins for skill tend to move in the same direction as the basic wage, but less than proportionately. Other workers are covered by state courts, which follow the rulings of the Commonwealth Court almost without exception. In Western Australia, South Australia, and Queensland the tribunals are compelled to adopt a basic wage in terms of legislative instruction, but they tend to follow closely the decisions of the Commonwealth Court. In Victoria and New South Wales, where over two-thirds of the country's industrial workers reside, awards must embody the Commonwealth basic wage. Tasmania also follows the Commonwealth Court. Employers in the very few occupations not covered by awards are in competition with employers paying award rates, and consequently they tend to follow the general direction of awards. In effect, therefore, the Commonwealth Court of Conciliation and Arbitration determines the general wage level for the entire country, except when competition raises wages above award rates.

The basic wage was originally the minimum wage that might

be paid to unskilled male labor. Under Section 25 of the 1947 Act, as revised, it has become something quite different: "that wage or that part of a wage which is just and reasonable for an adult without regard to any circumstances pertaining to the work upon which or the industry in which he (or she) is employed." Prior to 1947 the Court was not empowered to fix a basic wage for women, although it did determine a female minimum wage in its awards for industries under its jurisdiction. In most post-war awards the female minimum was set at 54 percent of the male basic wage, until in 1950 a female basic wage was determined equal to 75 percent of the male basic wage. Thus all workers under the jurisdiction of the Court now receive a basic wage as part of their remuneration.

Superimposed on this basic wage is a secondary wage, defined by Mr. Justice Higgins in 1919 as "that portion of a man's wages which remunerates him for such skill or other exceptional necessary qualifications as are required for his occupation, and as lift him above the level of the unskilled labourer" (13 CAR at p. 461).⁶ The secondary wages fixed by the courts or Commissioners are legal minima, and the law does not prevent payment of a higher wage. Throughout their life the courts have tended to broaden the range of skills and other qualifications which entitle a worker to a secondary wage. In his first Waterside Workers Award in 1914, Mr. Justice Higgins denied that wharf laborers were skilled in a sense that entitled them to a margin. At the present time, however, special margins for skill have been awarded to winchmen and hatchmen, to men working on the wharves as truckers and stackers, and to men handling bulk cargoes. As Professor Hancock has said, "union secretaries have developed the subtlety of mediaeval theologians in arguing fine points about 'margins' for skill"; he quotes one exasperated judge who protested, "It requires some kind of skill to blow one's nose."⁷

⁶ For a discussion of this point see Orwell de R. Foenander, *Industrial Regulation in Australia* (Melbourne 1947) p. 107.

⁷ Hancock, *op. cit.*, p. 151.

HISTORY OF THE BASIC WAGE

The basis for fixing the basic wage dates back to the famous "Harvester Case" of 1907, when Mr. Justice Higgins laid down as a living wage the sum of seven shillings per day as "fair and reasonable." In his judgment he made a number of announcements which influenced the whole subsequent history of the basic wage: "The standard of 'fair and reasonable' must, therefore, be something else; and I cannot think of any other standard more appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community. . . . Surely the State, in stipulating for fair and reasonable remuneration for the employees, means that the wages shall be sufficient to provide these things [food and shelter] and clothing and a condition of frugal comfort estimated by current human standards. . . . I cannot think . . . that the agreement is reasonable if it does not carry a wage sufficient to insure the workmen food, shelter, clothing, frugal comfort, provision for evil days, &c., as well as reward for the special skill of an artisan if he is one" (2 CAR pp. 3, 4). The estimation of what would maintain a family in "frugal comfort" has remained part of the consideration of the Court ever since.

The family for which this "frugal comfort" was to be provided was assumed to consist of husband, wife, and three children. There was very little statistical basis for the adoption of a family unit of this size, or for the estimate of the wage that would keep such a family in frugal comfort. Mr. Justice Higgins based his decision on an examination of nine household budgets and the statements of a few estate agents. Thirteen years later a Royal Commission on the basic wage discovered that Australian industries were, in effect, paying for 450,000 non-existent wives and over 2,000,000 non-existent children.

ADJUSTMENTS FOR COST OF LIVING

The necessity of taking account of the cost of living in determining the basic wage was recognized at the outset, in 1906. The

then president of the Commonwealth Arbitration Court (Mr. Justice O'Conner) argued that "there must also be had something for the increased cost of living in Australia, not only by reason of the higher costs for some of life's necessities, but also by reason of the increased comfort of living and the higher standing of social conditions which the general sense of the community in Australia allows to those who live by labour" (1 CAR p. 47, Merchant Service Guild v. Commonwealth Steel Owners Association). This statement clearly suggests that the basic wage should be adjusted not only for the rise in money costs of maintaining a given standard of living, but also for the general improvement of living standards in the country.

It was not until 1912, however, that the first cost-of-living statistics were published by the Commonwealth Statistician. This so-called A series indicated that the cost of living varied significantly among the six capital cities, and that it had risen between 1907 and 1912. Since 1913 the Court has established different basic wages for the various capital cities in accordance with differences in the cost of living, and has raised the basic wage in accordance with movements in the cost-of-living index numbers. The coverage of the official cost-of-living index was widened in 1921, and the new index became known as the C series. The present practice is to adjust the basic wage automatically, once a quarter, to the change in cost of living, as indicated by the C series index.

Dissatisfaction with the A series for determining an appropriate basic wage was one of the main reasons for the establishment of the Royal Commission in 1919, under the chairmanship of A. B. Piddington, K.C. The Piddington Report recommended that a bureau be set up to ascertain movements in the purchasing power of money, and to relate these changes to the standard of living of a family of five. The new C series was a direct result of the recommendations of this report, though the Court continued to use the A series until 1934, and for a few categories of workers until 1938. Also as a result of this report the Court provided in 1921 that adjustments to the basic wage should be made auto-

matically in each quarter, in accordance with variations in the cost of living. Another result of the report was the first revision of the basic wage since its establishment in 1907: it was raised by three shillings. The Chief Justice was then Mr. Powers, and this increase was subsequently known as the Powers award.

THE 1931 WAGE CUT

A further revision in the basic wage, apart from cost-of-living adjustments, was made in 1931, when the basic wage was reduced by 10 percent as a recovery measure. Throughout 1930 the federal basic wage was automatically lowered, as the cost of living fell. A downward wage-price spiral developed, each wage cut leading to price cuts, by reducing both costs and demand. By 1930 the cumulative drop in the Commonwealth basic wage was 12 percent, as it was in South Australia. Queensland introduced two reductions amounting to 10 percent, while basic wages were unchanged in Western Australia and New South Wales.

About August 1930 a movement was launched to reduce real wages as a recovery measure, that is, to reduce money wages by more than the fall in the cost of living. In November the Federal Court stated that a fall in national income required a further reduction in the basic wage. After eight weeks of hearings the Court announced an additional reduction of 10 percent in virtually all basic wages coming within its jurisdiction. In explaining this action the Court denied the trade-union contention that a reduction in wages would reduce purchasing power, arguing that the fall in wages would be offset by an increase in profits. Differences between workers' and employers' marginal propensity to spend were thus completely ignored by the Court. The Court further argued that since the cut in wages would lead to a more than proportionate increase in employment, the ultimate effect would be an increase in the total wages bill and thus in national income.

The Victorian and Tasmanian courts followed the Commonwealth Court in due course, but the other states pursued inde-

pendent policies. South Australia introduced a single cut of 16 percent. Western Australia made two cuts in 1931 totaling 15 percent, leaving wage rates in industries under state jurisdiction well above those in industries under federal jurisdiction. Queensland reduced the weekly wage by less than 4 percent. New South Wales maintained the 1929 rate, but after a change of government a further 15 percent cut was made in the basic wage, reducing basic wage rates in that state approximately to the federal level.

THE 1934 CASE AND "CAPACITY OF INDUSTRY TO PAY"

In 1934 the Commonwealth Court discontinued the old "Harvester Wage" as a basis for calculating the basic wage, and adopted instead a basic wage established in 1926 by the Industrial Commission in Sydney, adjusted for changes in the cost of living as indicated by the C series index. This principle for automatic adjustment of the basic wage has not since been altered in substance.

In its 1934 decision the Court stated that "the capacity of industry to pay," a consideration underlying the 1931 wage cut and the rejection of later applications for restoration, would henceforth be the major criterion for determining the basic wage. The interpretation of this criterion has been a subject for controversy ever since. It has been made clear, however, that the capacity of industry to pay refers to industry as a whole, and not to the capacity of particular industries or firms. In the Metal Trades Case the Full Court declared: "The mere fact that an employer is very prosperous and wealthy does not justify discrimination against him. Such discrimination has always been regarded by this Court as unsound and inexpedient in general, but possibly an exception should be made in the case of a prosperous monopoly where the prescription of a bonus in addition to the basic wage may perhaps be justified" (25 CAR at p. 507).

In 1934 the 10 percent reduction in the basic wage was nominally restored. The net increase, however, was less than 10

percent, because at the same time the "Powers" three-shillings increase of 1921 was discarded on the ground that, as Mr. Justice Dethridge put it, it was "an illogical extension of the basic wage" which "had become quite unjustifiable."

THE "REDDAWAGE"

The next basic-wage revision came in 1937, when a "prosperity loading" of six shillings per week for New South Wales, Victoria, and Queensland, and four shillings per week in the other three states, was added to the basic wage, restoring it to the 1929 level. This increase, which was additional to any cost-of-living adjustments, was based largely on the testimony of a Melbourne University economist, W. B. Reddaway, and has since been known in trade-union circles as the "Reddawage." The judgment of the Court refers repeatedly to Mr. Reddaway's submission, and the following extract from the judgment (37 CAR pp. 590-91) shows clearly the imprint of his economics:

The economic problem therefore is to arrive at a wage level, which while not so high as to prevent the capitalist section investing all the 'savings' which come into its control, is not so low as to allow money to pass to the capitalist section, which may not spend it promptly within the community, from the wage earner section which would forthwith use it within the community to buy goods and services. (Apart from economic reasons, there are of course humanitarian reasons why the wage level should be made as high as is economically possible, but for the moment, only economic reasons are being considered.) If at any time it is made to appear that the capitalist section for other reasons than an excessively high level of wages then prevailing, is refraining from investing 'savings' in its control, it may be quite good policy to raise the wage level so as to transfer the spending power from it to the wage earner section. It does not appear to be suggested that this is the position at present in the Commonwealth. But it is conceivable that such a position may exist at some time in a country, while at another time in the same country entrepreneurs may be showing a tendency to invest 'savings' to an excessive extent in producer goods and thus to lead up to a boom and

subsequent slump. The two conditions may tend to be alternative, both of them largely due to prevailing states of mind. In either case a raising of the wage level may be indicated as a remedy, but obviously no economic physician can prescribe with precision the proper amount of the dose.

It is also clear that this judgment, even more than the 1931 decision, introduced a criterion for determining the basic wage additional to the estimate of what was "fair and reasonable" and what was the "capacity of industry to pay." There is clear recognition here that the stability of the economy as a whole depends on the level of wage rates, and that the general economic outlook must be taken into account in determining the basic wage.

WARTIME REGULATIONS

In July 1940, as part of the general economic stabilization program, special regulations were issued, making the award rates of certain categories of skilled workers maximum as well as minimum rates. In February 1942 this principle was extended to all workers. The basic wage, however, was still altered automatically each quarter, with changes in the cost of living. In order to stop the incipient wage-price spiral, measures were taken in 1943 to stabilize the cost of living. Throughout the rest of the war, wages and prices in Australia were remarkably stable.

THE 40-HOURS CASE

In 1946 another major basic-wage case was heard by the Commonwealth Court, in connection with the application of the unions for a reduction of the working week from 44 to 40 hours. The application of the unions was granted by the Court, and the 40-hour week became effective at the beginning of 1948. An "interim" increase in the basic wage—amounting to seven shillings a week—was announced in December 1946.

THE 1949 CASE

Early in 1949, at a time when the basic wage was running at about £6/10, the unions applied to the Commonwealth Court

for an increase to £10. Since the general economic situation was inflationary, this application came as something of a shock to the general public of Australia. According to a high-ranking A.C.T.U. official, the unions had no hopes, however, of being awarded the full £10 basic wage, this figure having been named to take advantage of an anomaly in the law and conserve union funds. When application for a wage increase is made, each individual union involved is required to pay a fee; and, under the law, the case remains the same case until the basic wage reaches the figure named. Thus until a basic wage of £10 is granted, no new fee need be paid.

The unions rested their case mainly on the decline in labor's share of national income from prewar or wartime peaks, and the great prosperity of Australian industry, especially of agriculture. The present writer, subpoenaed by the unions in October 1949, argued that a modest (10/- to £1) increase in the basic wage need not cause uncontrollable inflation or serious unemployment, and need not retard economic progress or cause balance-of-payments difficulties. The employers argued that a wage increase would cause serious inflation and endanger marginal exports.

The Court handed down its judgment on October 12, 1950, after twenty months of hearings and deliberation. A £1 increase in the basic wage was awarded. Chief Justice Kelly presented a dissenting judgment, on the grounds that labor's share in national income could not be increased in the existing circumstances without serious inflation, which would perpetrate social injustice for sections of the community whose incomes do not increase with prices. Justices Foster and Dunphy, while not unaware of the inflationary danger of a wage increase at the time, argued that industry clearly had the "capacity to pay" such an increase, and that control of inflation was not the responsibility of the Court.

Effects of the System

The effectiveness of the Australian arbitration system might be tested in terms of four criteria: its effect on the distribution of

income; its effect on the production of the economy; its effect on the extent of industrial peace; and its effect on the stability of the economy. It is not possible, of course, to answer these questions definitively, since the effect of the arbitration system cannot be isolated from all the other factors operative in the economy. It is of interest, however, to compare developments in Australia, in terms of these four criteria, with similar developments in other countries.

DISTRIBUTION OF INCOME

As regards the first question, there is no evidence that the arbitration system has raised labor's share of national income over the past twenty years, or that it has succeeded in obtaining for Australian labor a higher share of national income than is earned by workers in other countries with a similar degree of economic development. In the fiscal year 1928-29, wages and salaries constituted almost 59 percent of Australia's personal income, and ten years later, 1938-39, they amounted to about 54 percent. When an appropriate share of the pay of the armed forces is added to wages and salaries, it appears that there was a significant increase in labor's share of national personal income during the war, mainly as a result of the success of price control. By 1946-47, however, labor's share, including the pay of the armed forces, was no more than 59 percent, and in 1947-48, as a consequence of rising prices, it dropped back to 54 percent. It recovered to nearly 56 percent in 1948-49, but fell again in 1949-50.⁸ Thus the statistics, for what they are worth, indicate a slight decline of labor's share in the two decades following 1928-29. A similar calculation of labor's share of the "national dividend," defined as the amount of income available for distribution independently of the government tax-and-spending process, shows a decline from 56 percent in 1938-39 to 53 percent in 1948-49.

Moreover, official statistics indicate that the share of wages and salaries in national personal income was lower in Australia, both

⁸ Data from *National Income and Expenditures*, 1948-49 and 1949-50.

before and after the war, than it was in Canada, the United Kingdom, or the United States. For Canada the figure is 61 percent for both 1939 and 1947; for the United Kingdom the percentages are 60 (1938-39), 62 (1947), and 63 (1948); and for the United States the comparable figure is 63 percent for both 1939 and 1948.⁹

These figures suggest that the Australian system has not been highly successful from labor's point of view. It appears, however, that the wages-income ratio in agriculture constituted a substantial reason for the international differences, at least in the prewar period, for when agricultural and pastoral incomes are excluded a somewhat different picture is obtained. With this exclusion, prewar wages and salaries in Australia amounted to 80 percent of average income "per adult male equivalent" (both 1928-29 and 1938-39); in Canada this percentage was 83 (1938) and in France it was almost 82 (1938), but in the United States it was less than 76 (1938), and in the United Kingdom less than 73 (1930).¹⁰ The differences between the results obtained with and without agricultural and pastoral incomes reflect the relatively low share of Australian labor in those incomes.

On the other hand, the basic-wage system has virtually eliminated poverty among wage-earners. The basic wage of £8 awarded in 1950 was worth, in internal purchasing power, some \$30 to \$40 a week to the wage-earner whose tastes conformed to the typical workingclass budget. Speaking roughly, then, the "submerged third" of the workers in Canada or the United States has no counterpart in Australia. The national-income figures suggest that the Court's solicitude for the unskilled worker has improved his lot at the expense of the more highly skilled and

⁹ Data for Canada from *Official Handbook*, 1949; for United Kingdom from *National Income and Expenditure of the United Kingdom, 1946-48* (Cond. 764a); for United States from *Economic Report of the President*, 1950.

¹⁰ Data from Queensland Bureau of Industry, *Economic News*, vol. 16, nos. 6-7 (June-July 1947). In computing the average income per adult male equivalent it is assumed that all men aged 20-59 are seeking work, and that each constitutes one adult male equivalent; that the remainder of those seeking work are women, children, or older men, and that each constitutes one-half an adult male equivalent; and that all working proprietors, employers, and unemployed are adult males.

white-collar workers, rather than at the expense of non-wage-earners as a group. Within the "capitalist" group, in turn, the entrepreneurs, especially the farmers, have made gains at the expense of the rentiers.

PRODUCTIVITY

The effects exerted on productivity by actions of the Court are less direct, of course, than those exerted on labor's share of national income, and consequently are still less easy to ascertain. The available statistics indicate that in the early 1890's productivity per man-hour was higher in Australia than in either the United States or Britain. When the Commonwealth Court was established, Australian productivity had fallen below American but was still higher than that of Britain, and was rising more rapidly than either of those country's. Australian productivity fell markedly during World War I, but increased rapidly during the early 1920's; since the middle of the 1920's it has shown a marked tendency to flatten out, and there has been virtually no increase in recent years. As can be seen from Table 1, productivity per man-hour in 1946-47 was very slightly above its level of 1928-29 and substantially below its level of the 1930's; it increased in 1947-48, and also in 1948-49, but, because of the reduction in the work week, production per man-year remained more or less unchanged.

Since the period of operation of the Court includes decades in which productivity increased more rapidly than elsewhere, and other decades in which it increased much less rapidly than elsewhere, it is hard to determine the precise role of the arbitration system in influencing productivity trends. Colin Clark has attributed the tapering off of the increase in productivity to the development of manufacturing behind a high protective tariff wall after 1925. The question may be raised, however, whether an equal expansion of Australia's population and national income, without any change in the structure of production, would not have entailed a declining rate of increase in productivity through the

TABLE 1. PRODUCTIVITY PER MAN-YEAR AND PER MAN-HOUR IN AUSTRALIA, 1928-29
THROUGH 1947-48 *

	<i>Number in Work (in thousands)</i>	<i>Average Hours per Year</i>	<i>Real Product per Man-Year</i>	<i>Real Product per Man-Hour</i>
1928-29	2438	2242	1432	.639
1929-30	2451	2244	1469	.655
1930-31	2147	2267	1403	.619
1931-32	2041	2245	1507	.671
1932-33	2053	2239	1525	.681
1933-34	2129	2234	1520	.680
1934-35	2280	2234	1548	.693
1935-36	2431	2226	1486	.668
1936-37	2587	2220	1415	.637
1937-38	2698	2215	1418	.640
1938-39	2747	2205	1473	.668
1939-40	2930	2180	1432	.657
1940-41	3100	2222	1349	.607
1941-42	3193	2308	1435	.622
1942-43	3292	2363	1510	.639
1943-44	3310	2362	1519	.643
1944-45	3250	2330	1454	.624
1945-46	3210	2319	1428	.616
1946-47	3200	2301	1503	.653
1947-48	3250	2186	1511	.690

* Data from Bureau of Industry, Brisbane.

extension of agricultural and pastoral industries to less and less fertile land.

INDUSTRIAL PEACE

Some indication of the degree of success of the Australian system in maintaining industrial peace is provided by comparative figures on the number and severity of industrial disputes in different countries. It appears that during 1931-37 the number of industrial disputes, and the consequent loss of working days, were lower in Australia, relative to the size of the labor force, than in the United States, but greater than in Canada or New Zealand; in the United Kingdom the number of disputes was

somewhat smaller, relative to the labor force, than in Australia, but the loss of working days was somewhat higher. Table 2 presents comparable figures for 1945-49. It can be seen there that in each of those years the number of disputes, in relation to

TABLE 2. INDUSTRIAL DISPUTES IN AUSTRALIA AND OTHER COUNTRIES, 1945-49^a

	<i>Australia</i>	<i>Canada</i>	<i>New Zealand</i>	<i>United Kingdom</i>	<i>United States</i>
NUMBER OF DISPUTES					
1945	945	197	154	2,293	4,750
1946	869	228	96	2,205	4,985
1947	982	236	134	1,721	3,693
1948	1,133	154	101	1,759	3,419
1949	849	137	123	1,423	3,606
WORKING DAYS LOST (in thousands)					
1945	2,120	1,457	67	2,835	38,000
1946	1,948	4,516	31	2,158	116,000
1947	1,339	2,397	103	2,433	34,600
1948	1,655	886	93	1,944	34,100
1949	1,339	1,064	218	1,868	50,500
LABOR FORCE (in thousands)					
1945	2,649	4,326	679	16,149	52,820
1946	3,008	4,733	691	18,187	55,250
1947	3,217	4,847	701	18,796	58,027
NUMBER OF DISPUTES IN RELATION TO LABOR FORCE (%)					
1945	.036%	.005%	.023%	.014%	.009%
1946	.029	.005	.014	.012	.009
1947	.031	.005	.019	.009	.006
1948 ^b	(.035)	(.003)	(.014)	(.009)	(.006)
1949 ^b	(.026)	(.003)	(.018)	(.008)	(.006)
WORKING DAYS LOST IN RELATION TO LABOR FORCE (%)					
1945	80%	34%	10%	18%	72%
1946	65	95	4	12	210
1947	42	49	15	13	60
1948 ^b	(51)	(18)	(13)	(10)	(59)
1949 ^b	(42)	(22)	(31)	(10)	(87)

^a Data from International Labour Office, *Yearbook of Labour Statistics*, and from Canadian Department of Labour, *Strikes and Lockouts in Canada During 1949*. Ratios are rough approximations, based on rounded figures.

^b Ratios for 1948 and 1949 have been computed from 1947 labor-force data.

the size of the labor force, was very considerably higher in Australia than in any of the other four countries; in essential industries, such as coal mining and transport, the greater frequency of stoppages per worker in Australia was even more striking. The postwar record reflects less discredit on the Australian system when man-days lost through strikes are used as the criterion of industrial peace. In 1945 the Australian figures for working days lost, in relation to the labor force, were the highest of the five countries considered here, but in the next two years they were lower than those of Canada and the United States, and the rough estimates for 1948-49 indicate that in those years they were still surpassed by the United States figures.

Of course, the number of working days lost through industrial disputes is not a wholly reliable measure of the degree of industrial peace. Dr. Foenander warns that "favorable" figures may be indicative of a wage-earning class that has neither the spirit nor the organization to assert itself for the achievement of what it believes to be its rights, and that such figures may thus disguise a smoldering discontent that finds no expression in official returns.¹¹ A better measure might be the ratio of working days lost to trade-union membership, which would cast Australian experience in a much more favorable light. Moreover, in Australia, as Foenander points out (p. 140): "Many differences have their origins in trifling incidents—e.g. an illconsidered remark, an unsympathetic order by a foreman, a hasty refusal by an employee to perform some task required of him, a misunderstanding between the office management and the men's spokesman. No principle need be involved and nothing of real importance may be at issue."

ECONOMIC STABILITY

The effect of wage policy on economic stability is even more difficult to disentangle from other causal factors than its effects

¹¹ Orwell de R. Foenander, *Solving Labour Problems in Australia* (Melbourne 1941) pp. 6, 7.

on economic growth or industrial peace. There is no convincing evidence, however, that Australia's system of wage determination through the arbitration courts has made the Australian economy more stable than the economies of countries with different methods of wage fixing. As can be seen from the accompanying figures on unemployment,¹² Australia began the downward slide into the great depression earlier than Canada or the United States,

	1929	1932	1933	1937	1938	1939	1940	1946	1949
Australia	11.1%	29.0%	25.1%	9.3%	8.7%	9.7%	8.0%	1.4%	1.9%
Canada	4.2	18.4	20.5	9.2	12.0	12.1	9.7	2.6	2.0
United Kingdom	8.2	17.6	16.4	8.7	9.4	7.9	5.0	2.5	
United States	3.9	23.6	24.9	14.3	19.0	17.2	14.6	3.9	5.5

and at the bottom in 1932 had a larger percentage of the working force unemployed than either of these countries or the United Kingdom. The Australian recovery from 1932 to 1937 was relatively strong, and the 1937-38 recession, which hit Australia after a year's lag, was much milder than in Canada or the United States.

It is probable that the 1931 reduction of wages contributed to the subsequent recovery. The reduction in money wages was successful in reducing real wages and even labor's share of national income—a development that is not surprising in an economy as open as Australia's. Domestic prices fell more or less proportionately with the wage cuts, thus reducing the costs of materials and equipment in the export industries, as well as wages. The position of the exporter was therefore improved; the Australian exporter was already in a good competitive position for the most part, but the fall in costs raised his income, with some secondary

¹² Australian figures represent unemployment in percent of total membership of reporting trade unions. Canadian figures, representing unemployment in percent of total labor force, refer to June 1 of each year; for 1946 and 1949 they are based on sample surveys of the labor force. United Kingdom figures are official estimates, based on unemployment-insurance statistics. United States figures, representing unemployment in percent of total labor force, are based on American Federation of Labor estimates (1929-39) and on sample surveys of the labor force (1940-49). All data for 1929, and United Kingdom data for all years, from *International Labour Review*; for the other three countries, post-1929 data from United Nations, *Statistical Year Book*, 1949-50.

effects on the rest of the economy. Nevertheless, depreciation of the Australian pound, rising world prices for Australian exports, and increased public investment outlays probably contributed more to the rise in income and employment than the wage cuts, and reduced interest rates and the restoration of confidence through balanced budgets may also have produced favorable results.

It is also possible that the wage increase in 1937 helped to sustain the recovery, and prevent a downswing in 1938, by preventing a "shift to profits," supporting consumer spending, and thus avoiding unplanned inventory accumulation. The existence of the court system probably made organized labor more willing to accept the wage cuts in 1931, and perhaps made employers less reluctant to accept wage increases in 1937. It remains true, however, that wages moved in much the same sort of way in countries without elaborate systems of arbitration courts, and perhaps moved with even more flexibility. Moreover, the advantages of the 1931 cut could have been more simply achieved by a further depreciation of the Australian pound.¹³

During the war and postwar period, during which inflation has been the chief form of economic disturbance, Australia did a relatively good job of stabilizing the cost of living, at least until

	1938	1944	1945	1946	1947	1948	1949	1950	1951
Australia	103	129	129	131	136	148	162	179	196
Canada	101	117	118	122	134	153	159	165	174
United Kingdom	101	130	132	132	135	142	146	150	155
United States	98	122	125	136	155	167	166	167	179

about 1948; this is evident from the accompanying cost-of-living indices (1937 base).¹⁴ Undoubtedly the translation of award rates into maximum as well as minimum rates in 1940 contributed to wartime stability of the cost of living, but it was not until rigorous

¹³ See International Labour Office, *Wages: (a) General Report* (Geneva 1948) pp. 118-20, and W. B. Reddaway, "Australian Wage Policy, 1929-1937," in *International Labour Review* (March 1938).

¹⁴ Data from United Nations, *Monthly Bulletin of Statistics* (July 1951); the 1951 figures refer to the first quarter.

price controls were imposed in 1943 that the index was effectively stabilized.¹⁵ These controls were supported by a full battery of anti-inflation measures, including extremely high income taxes, subsidies, rationing, and the like. Moreover, the relative stability of Australian prices from 1945 through 1947 is to be explained mainly by the retention of controls until 1948, when a referendum ended the Commonwealth government's emergency powers. The increase in the basic wage in 1946, and the automatic increases with rising cost of living, meant that wage policy in and of itself was a destabilizing factor throughout the postwar period.

By the end of 1950, when the new £1 increase in the basic wage became effective, the Australian price level had surpassed the Canadian and American, and inflation was the major economic problem in the country. It is true that the further devaluation of the Australian pound, the enormous rise in the value of exports, and the high level of private investment were major factors in creating inflationary pressure; but the pressure was aggravated by wage policy.

Lessons of the Australian Experience

Australian experience with the determination of wages through arbitration courts points clearly to certain problems that would arise in any country developing similar institutions. Some of these problems are "minor," in the sense that they can be remedied without radical revision of the wage-fixing machinery; others are more fundamental.

MINOR PROBLEMS

Among the problems in the minor category is the difficulty in which state governments are put by wage increases through the Commonwealth Court. Under the terms of the wartime financial agreement between the Commonwealth and the states, the state governments abandoned the right of income taxation to the Commonwealth, in exchange for a fixed annual subsidy from the

¹⁵ See International Labour Office, *Wages* (cited above) pp. 150-57.

Commonwealth government. Thus the state governments are deprived of the most obvious means of offsetting the effect of higher wage rates on the budgets. An increase in wage rates not only leads to an increase in wages and salaries paid to state government employees, but also tends to raise the prices of materials and equipment purchased for state projects. The higher the wage levels are raised by the Commonwealth Court, the greater is the financial dependence of the states on the Commonwealth budget, and the less is their power to pursue independent policy. Similar problems would arise in Canada, under existing financial arrangements between the federal and provincial governments.

Another minor problem is the handicap under which the unions are placed in obtaining legal counsel for fighting arbitration cases. Even with so widespread a union organization as that in Australia, trade-union funds are limited. The unions are reluctant to pay the higher fees demanded by topflight lawyers; and lawyers without a strong labor bias are sometimes reluctant to accept cases for the trade unions, lest this apparent partisanship debar them from obtaining more lucrative commissions from employers. In Australia, as in other countries, legal training is hardly conducive to the development of left-wing sympathies. Thus, in practice, the trade-union side of the case is usually delivered by permanent trade-union officials on modest salaries, while the employer's case is presented by a battery of leading lawyers. In the most recent basic-wage case the unions' application was prepared and presented almost entirely by a single official of the A.C.T.U., with some assistance from two or three other trade-union officials. The employers had a team comprising the best legal brains that could be bought, backed by an extensive research organization. In the United States or Canada, where trade-union membership is relatively small, this problem might arise in more acute form.

The Arbitration Court was established by a Liberal government under pressure from organized labor, but many Australian economists and legal scholars feel that the system now operates more to the favor of employers than of employees. The awards

of the Court tend to lag behind increases in the demand for labor or in the bargaining power of trade unions. The cost-of-living adjustment provides some protection of labor's share against rises in prices, but provides no automatic adjustment to increases in productivity. The unions will not make an application for higher wages until they feel they have a strong case. The procedure of the Court is so laborious that months elapse between the making of an application by the union and the award of the Court. In the most recent basic-wage case 6950 pages of evidence and 440 exhibits were presented. The whole case took nearly two years from the time the first application was made until the new wage became effective.

Thus, by the time a case is settled, the "equilibrium" wage rate that would be established in a free market may have altered substantially. Since the long-run tendency is toward higher wages, this lag of Court decisions behind the labor-market situation tends to favor employers on balance. Labor has been able to maintain its share of national income, despite this lag of basic-wage rates behind the value productivity of labor, because a growing proportion of wage-earners has received margins above the basic wage.¹⁶ An automatic adjustment of the basic wage to changes in labor productivity, applied for by the unions in the 1949-50 case, would help to overcome this difficulty; but the Court expressly rejected this proposal in its decision.

Another problem, which may be quite serious if not remedied, is the effect produced on the allocation of labor by the existence of a common basic wage for unskilled labor in all industries. Differences in the productivity of unskilled labor from one industry to another may easily arise, and the simplest way of

¹⁶ During the 1949-50 case the employers suggested that labor was enjoying a larger share of "national leisure," as a result of reduced labor hours, longer vacations, and the like. This contention is of course impossible to prove or disprove statistically. In the short run, however, such reductions in labor supply, relative to the supply of fixed factors, would tend to raise the marginal productivity of labor while reducing its average productivity. In a purely competitive economy labor's share of national income would *rise* as a result.

assuring that labor goes where the productivity is highest is to permit the high-productivity industries to out-bid others for unskilled labor. If the minimum wage becomes also a maximum, the market loses its function as an allocating device. In Australia, since few workers receive the basic wage alone, this problem may not exist in a serious form at present; but it could arise under less inflationary conditions, and it could certainly arise in other countries adopting similar wage-fixing machinery.

A similar problem arises out of the lag between increases in the basic wage and the adjustment of secondary wages. The immediate effect of an increase in the basic wage rate is a reduction in the percentage margins for skill; as prices rise in consequence of the wage increase, the real value of margins for skill is also reduced. This lag of secondary wages behind the basic wage is chronic, and as indicated above, since profits have proved difficult to squeeze, the higher basic wage has been achieved largely at the expense of wages and salaries in the upper brackets. Thus the incentive to acquire special skills is somewhat reduced.

Moreover, since the margins for skill are determined by a whole host of arbitration courts, conciliation commissioners, and wages boards, the resulting wage structure is somewhat haphazard, and may bear little relationship to the relative productivity of workers in particular industries. The system therefore deprives the wage structure of some of its efficiency as an allocating mechanism. Part, but not all, of this difficulty would be met by the unions' proposal that the courts grant special "efficiency" awards to unions in industries that the government wishes to encourage as a matter of national policy.

FUNDAMENTAL PROBLEMS

One of the inescapable problems inherent in the Australian approach to wage determination is the necessity of a forecast by the Court of future economic conditions. Because of the complexity of the machinery involved in changing the wage structure, the basic wage must be fixed not only in terms of prevailing

economic conditions, but also in terms of the conditions that are likely to prevail two or three years in the future. Accurate economic forecasting is difficult enough for economists specializing in forecasting; how much more difficult it is for learned judges, usually chosen for their distinction as barristers or as judges in other courts!

Still more fundamental is the enormous difficulty of handling a major question of economic policy by legal methods. A basic-wage case is handled with all the pomp and circumstance of a British court, with the learned judges, in wigs and gowns, listening to evidence and cross-examination from the witness box. Matters relevant to wage determination can be presented to the Court only by means of the briefs of counsel, and by examination and cross-examination of witnesses. The inevitable result is that much time and energy are devoted to efforts by counsel for one party to discredit witnesses called by the opposing party. Not even the "expert" is spared this kind of examination. Each party to a case will endeavor to prove that expert witnesses called by the other party are incompetents, liars, and cheats.¹⁷

The main trouble with this process is not that it makes the witness uncomfortable (although it certainly does that, especially since the witness stands throughout the whole of his cross-examination by a succession of lawyers); the trouble is rather that it uses up a good deal of the time of the Court and often, by confusing the witness, confuses the issue. It also makes the experts belligerent; the temptation to try to outwit the barrister at his own game becomes irresistible, and the atmosphere of the public debate quickly displaces that of the seminar. All this has the

¹⁷ The chief lawyer for the employers, in cross-examining the author, endeavored to prove, partly by reference to the author's previous publications and partly by questions, that the author really did not believe accurate economic forecasting to be possible, and that accordingly his own forecasting was useless; that he had little or no idea of the special problems of the Australian economy; that since he was leaving the country soon, he had no real concern with the economic fate of Australia; that his whole approach to the case was that of a "vivisectionist," experimenting to satisfy his own curiosity, and quite heedless of the pain or permanent damage his experiments might cause.

inevitable effect of making independent experts reluctant to appear for either side of an arbitration case. This reluctance to appear is enhanced by the fact that the expert witness exposes himself to the risk of misinterpretation by the Court, misinterpretation which may find its way into the judgment, against which the expert has no satisfactory recourse.¹⁸ The expert cannot take time to explain his whole frame of reference to a Court composed of laymen (in so far as the expert's field is concerned), and may fail to appreciate how different is the analytical framework into which his evidence is being cast by the Court, whose background training is so different from his own. He cannot quizz the learned judges, as he can quizz his graduate students, to make sure that he has been properly understood.

The problem of dealing with wage matters by legal process becomes especially acute when decisions must be based upon available statistics. In the recent basic-wage case, official and unofficial statistics on cost of living, productivity, and national income came under the extended scrutiny of the learned judges. The unions have frequently contended that the "C" series is not an adequate measure of the true rise in the cost of living, a contention that involves the Court in detailed analyses of the methods by which the statistics entering this ~~series~~ are collected and weighted to construct an index.

In the 1949-50 case the C series emerged victorious in its tilt with the Court. The national-income figures fared less well. The Australian national-income figures leave much to be desired,

¹⁸ Despite the repeated statements in my submission that the economist can *not* determine a "just" income distribution, and that my purpose was only to analyze the probable effects of a wage increase on prices, employment, economic growth, and the like, two of the three judgments in the 1949-50 case took me to task for arguing that "social justice" demanded a redistribution of income from profits to wages. I had pointed out that since export prices are fixed in the world market, exporters could not add any increase in labor cost to the prices they could otherwise get, and that therefore an increase in wages would, *in itself*, raise labor's share relative to the share of exporters. Mr. Justice Dunphy took this statement to be a *recommendation* that the Court transfer income from exporters to workers, and insisted that the Court had no practical means of doing so, let alone of transferring income back to exporters if world prices fell.

especially since they contain a sizeable item for agricultural income, in the form of accumulated stocks of agricultural goods, which are valued currently at the price at which they are expected to sell. Needless to say, this point was brought out in cross-examination pertaining to data on labor's share of national income. Counsel for the employers also sought to show that since the national-income figures themselves are revised substantially from year to year, little importance can be attached to them. Chief Justice Kelly himself stated that he had no faith in the national-income figures. The attitude of the Justices Foster and Dunphy was that imperfect figures are better than none, but both expressed reluctance to base their judgments on the national-income figures.

Similar questions were raised regarding the validity of the available figures on labor productivity. Since the unions were proposing that wage rates be adjusted for changes in productivity as well as for changes in the cost of living, the productivity statistics were especially relevant to the considerations of the Court. But the Commonwealth Bureau of Statistics publishes no official figures on productivity. The unions were forced to rely upon figures published by the Bureau of Industry in Brisbane and on the results of independent research scholars. The Court showed great reluctance to accept the figures of the Bureau of Industry, which had been prepared under the direction of Colin Clark, who had been subjected to intensive cross-examination in the 40-hour case. Lack of an adequate productivity series was one reason for the Court's rejection of the unions' application for an automatic adjustment of the basic wage to national productivity.

The present writer submitted productivity figures obtained from a research project carried out in his Department at the University of Melbourne. The counsel for the employers objected to the submission of these data as evidence, because Dr. Stevens, the author of the study, was not available for cross-examination. Dr. Stevens was subsequently called, and an interesting point of order arose. He had obtained data from private

firms, on the understanding that he would not reveal publicly the figures for any one firm, and he felt that he was debarred by this understanding from revealing the names of the firms in his sample. Counsel for the employers, on the other hand, insisted that the evidence would be purely "hearsay" unless he was in a position to examine Dr. Stevens' sources. From a legal point of view, the counsel for the employers was unquestionably right; and the Chief Justice, in upholding Dr. Stevens' request that his commitment be respected, made it clear that the impossibility of cross-examination on sources would greatly reduce the weight that could be attached to the data.

The point is interesting because the same difficulty arises with any data provided initially by private firms, whether gathered by private research workers or by government. Statistics are necessary for the determination of an appropriate basic wage; legal process requires examination of initial sources; the initial sources are largely the books of private firms; and thus examination of sources means, in effect, opening up the books of private firms to the general public. Such a procedure would encounter strong resistance from private firms.

The problem of dealing with wage policy through arbitration courts, without established lines of communication with government departments determining other aspects of economic policy, becomes particularly acute when the government refuses to make its attitude officially known, as was the case in 1949. In the previous (1946) case the Commonwealth government supported the unions' application. There can be no doubt that this support was a major factor in the Court's decision to grant the application of the unions. In the course of the 1949 case it became apparent that the Court was greatly handicapped by lack of knowledge as to the government's attitude toward price control, tax rates, foreign-exchange rates, public investment, social-security expenditures, and the like. Mr. Justice Foster suggested that the only recourse for the Court was to make its decision in terms of what was a desirable wage rate, on the assumption that government

action would be taken to offset any undesirable effects, which the Court could not prevent by measures within its jurisdiction. At another point Mr. Justice Foster pointed out that the decisions in the 40-hour-week case had been based on the assumption that price control would continue in operation, whereas in fact price control was abandoned shortly after the decision was handed down. Chief Justice Kelly complained that not only was the Court unable to tell what policies the government would undertake, but it could not disentangle the effects of its own decision from the effects of other economic policies, even in retrospect. The difficulties inherent in separation of the Court's decision from other policy decisions were highlighted by the fact that devaluation of the Australian pound, which vitally affected the Court's deliberations, came in the very middle of the case.

A special aspect of the separation of wage policy from other aspects of national, social, and economic policy which occupied the time of the Court in the 1949 case was the redistribution of income through the government tax-and-spending process. The Court seemed undecided as to whether it should consider only the distribution of income through the labor market, over which alone it exerted control, or should take into account the distribution of income by the fiscal process, over which it had no control.¹⁹ This question is one that would have to be faced by any court with powers to determine general wage levels. A similar question that was raised at several points in the proceedings was whether increased labor incomes in the form of additional leisure should be regarded by the Court as part of labor income. The interchange on this subject is a good indication of the imponderables to which an arbitration court must endeavor to assign weights in arriving at its decision.

The most fundamental problem of all is the clash between

¹⁹ The author's contention in his submission, based on American and English experience, was that the extent of redistribution through the fiscal process was too small to enter into the deliberations of the Court, and that its decisions should be based on the share of wages in national income alone, exclusive of taxes, family allowances, and the like.

economics and ethics in the decisions of the Court. On the one hand, the Court is still trying to perform its original function of determining a fair and reasonable wage structure, a wage structure that will maintain every family in "frugal comfort" and provide appropriate margins for skilled workers. On the other hand, the Court is endeavoring to assess industry's "capacity to pay," a concept that has been broadened until it has become synonymous with the general stability of the Australian economy.²⁰ In the 1931 and 1937 cases the economic situation was clear, and the Court could make its decision in economic terms, along lines suggested by economists called as expert witnesses. In 1946 the Court had a clear directive from the Commonwealth government. In 1949 the Court was on its own. The economic situation was confused, a mixture of inflationary and deflationary forces, although by the time the case was completed, most of the uncertainty about the short-run economic outlook had disappeared. The few economists called to give evidence on the general economic situation told the Court, in effect, that a wage increase would be inflationary, but need not be seriously so. Thus the Court was thrown back on its own conception of justice. Some concern was shown for the effect of a wage increase on the Australian balance of payments, particularly the effect on marginal industries, but it was generally felt that any export industry that could not withstand a higher wage, in view of the devaluation of the Australian pound, was probably too inefficient to be worth preserving.

The main question, therefore, was one of social justice. It was clear that labor's income was not increasing nearly as fast as the income of the agricultural sector of the economy, and it seemed to be lagging somewhat behind national income as a whole. On the other hand, there was some concern for the position of those income groups that were not able to raise their

²⁰ The judgment in the 1949-50 case, however, and particularly the judgment of Chief Justice Kelly, endeavored to restore the narrower concept of "capacity to pay" as the proper criterion of the Court, and to deny that the Court is concerned with economic policy.

incomes proportionally to the rise in prices. Chief Justice Kelly, in particular, showed concern for the position of these income groups. Mr. Justice Foster, on the other hand, apparently felt that this group was too small to count heavily in a decision regarding what was an appropriate wage rate.

Mr. Justice Foster also expressed doubt as to whether a "just" distribution of income could be defined.²¹ But his distinction

²¹ The following interchange between the present writer (H) and Mr. Wright, counsel for the employers (W), Mr. Justice Foster (F), and Chief Justice Kelly (K), taken from the transcript of proceedings, may be of interest:

W—How does this proposition sound to you regarding the distribution of the national dividend: "we are of opinion that there is no 'just' division between capitalists and workers or between the various sections of the community"?

H—I do not think I would accept that.

F—Where is the point of justice? Is it not, after all, a matter of arbitrary decision on somebody's part?

H—It is a matter of, I hope, wise decision on somebody's part.

F—I agree about the wise, but I do not agree about the just. It may be justice according to law, but there is no such thing as justice in saying that a wise decision is 60% for the workers and 40% for the rest of the community. I agree that it might be wise, but I cannot find out how you determine it as just.

H—I cannot. What I really believe is that this question as to the degree to which and the pace at which equality in income distribution should be sought is a question to be decided by the electorate . . .

K—You must surely define "justice" in terms of the existing society every time?

H—Yes. My approach was a very simple one. It seemed to me that the history of the Arbitration Court suggested that it considered its function to be to create a greater equality of income distribution where economically possible, and it seemed to me, too, that that was the basic social philosophy of the Australian people as indicated in Government policy. My approach was, "All right, taking it as granted that there is a desire to improve the income distribution (in the sense of making it more equal), is it economically possible to improve the income distribution by raising the basic wage at this time, and to do so without causing any serious economic repercussions?"

W—I have found myself in the difficulty that I gathered from your thesis that you were under the impression that there was a just division between capitalists and workers or between various sections of the community, and I think that is your impression, is it not?

H—I think there is a just division, but I do not know what it is.

W—What I read you was an excerpt from a recent judgement of this Court.

Apparently the riddle is left unsolved for the moment.

between "just" and "wise" did not save the Court from the necessity of making its decision in the 1949 case mainly in terms of ethical rather than economic considerations. It is clear that any such institution, operating without a clear-cut directive from the people as a whole as to the extent to which and the rate at which it should seek to equalize incomes, is compelled to make exceedingly difficult decisions regarding what income distribution is socially desirable—both at the time a judgment is handed down and in the near future. The obligation to make such a decision cannot be avoided by statements that the Court is not concerned with income distribution, and that there is no "just" wage, but only a "wise" one.

Conclusions

The objective record of compulsory arbitration in Australia is not such as to recommend the system to countries that do not have it. It has not succeeded in raising the share of wage- and salary-earners in the national income. It has improved the position of workers in the lower half of the wage scale at the expense of those in the upper half, but the stagnation of productivity from 1929 to 1948 suggests that this result may have been accompanied by a diminished incentive to acquire special skills. The system has not succeeded in maintaining industrial peace, nor does it appear to have contributed materially to economic stability. It causes financial difficulties for the state governments, it tends to delay wage increases in periods of rising national income, and it results in a haphazard wage structure which may misallocate labor. It puts an important aspect of national economic policy into the hands of a system of courts, with no responsibility to the electorate and no established channels of communication with government departments formulating related policies. The court system reduces the value of the expert as a source of advice, and compels reliance on inadequate statistics or detailed examination of their basic sources. Finally, it results in open clashes between ethical concepts (or legal precedent)

and economic considerations, without providing any satisfactory criteria that may serve as reliable aids in the resolution of these clashes.

When it comes to intangibles, the case against the arbitration courts is less clear. Despite the prevalence of industrial disputes, one gets the impression that industrial relations are more good-natured in Australia than they are on this continent, and that the conflict between labor and management is less personal and less intense. It should also be said that before the arbitration-court system is discarded for another, equally severe tests should be applied to other systems as those that have been applied here to compulsory arbitration in Australia.

NEO-CONFUCIANISM OF THE SUNG-MING PERIODS

BY CH'U CHAI

IN THE four thousand and five hundred years of Chinese history, there was a period of sophisticated thought, of metaphysics, of philosophical poets and poetic philosophers. This was at the beginning of the Sung dynasty, from 1020 to 1120 A.D., when the classic age was at its end in China and gross darkness brooded over Europe. Earlier dynasties had been distinguished by various forms of intellectual activity, which together make up the Chinese culture. For instance, the Chou dynasty (1122-255 B.C.) was distinguished by the invention of political systems, the Han dynasty (206 B.C.-220 A.D.) by historical writings, and the T'ang dynasty (618-905 A.D.) for poetry and the drama. It was not until the Sung epoch that the Chinese began to look outward upon the external world and evince a disposition to question everything in heaven and earth.

In the work of setting anew the foundations of religion and philosophy, six men took the lead: Chou Tung-I, Ch'eng Hao, Ch'en I, Chang Tai, Chu Hsi, and Lu Chiu-Yuan. All six were Confucian scholars, but their intellectual activity was stimulated and determined by the speculations of Buddhist and Taoist writers. Their writings derive immense importance from the fact that they began to consider the problems dealing with nature, with the external world, and with man as a part of nature. With the emergence of that viewpoint Chinese philosophy passed from its ancient to its modern period.

This was the period that was noted for the rise of Neo-Confucianism, usually known as "the Li-ism of Sung." The word Neo-Confucianism is actually a misnomer. It does not stand for a genuine revival of Confucianism. The Neo-Confucianists were no doubt the offspring of Confucius, but in their early years

they were believers in Taoism and Buddhism, and only afterward went back to Confucius. They assumed the tasks of criticism, reviewed the evidences of antiquity, and recorded their conclusions. Thus Neo-Confucianism was a kind of summing up or revision of the ethics, morals, and beliefs of the past, and as such was in keeping with the spirit of the times. It contained the principles of Confucianism in a new form, thoroughly tinged with Buddhistic meaning. Hence a certain amount of space in the following pages will be devoted to the influence of Buddhism in China.

Neo-Confucianism is in one sense the modern science of China, for besides theory, it has a technical and applied side. But it is distinguished from modern western science by the fact that, whereas the latter purports primarily to know and control matter, Neo-Confucianism aims chiefly to know and control the mind. In the following treatment of Neo-Confucianism its technique will be elucidated in connection with the discussion of its characteristics.

There was a divergence of thought among the Neo-Confucianists which led ultimately to the formation of two separate schools, the scientific and the contemplative. By the Chinese the former is called the Sung school of Li-ism, and the latter the Ming school of Li-ism. The Sung school was nearer the whole rationale of Confucian thought, and the Ming school was more akin to the thought of Indian Buddhism. These two divergent schools differed widely in their attitudes and methods of study. The Ming school accused the Sung school of being too formal; the Sung school accused the Ming school of being too subjective. Both of them will be discussed in connection with the general system of Neo-Confucianism.

Buddhism and Neo-Confucianism

The intellectual soil of China is composed of three leading elements which, jumbled together without regard for inconsistencies or absurdities, seem to flourish simultaneously in China. These are Confucianism, Taoism, and Buddhism. Confucianism

gave the Chinese an elaborate theory of their social organization and civil polity, but it studiously shunned all questions that partook of the supernatural. Taoism, starting as mysticism, has degenerated into a hodge-podge of the crudest and tawdriest superstitions (the Taoism referred to here is the later Taoist religion, which is different from earlier Taoism as a philosophy). Buddhism came to the Chinese like an evangel of hope, assuring every man of an inalienable interest in a life to come.

Buddhism originated with Gautama Shakya Muni, who died about 480 B.C. He was an Indian prince who, moved by all forms of human misery, renounced his possessions and wandered about like a beggar. He believed that the human soul revolves perpetually in the urn of fate, liable to endless ills and enjoying no real good. He preached, therefore, that its only resource against this state of interminable misery is serenity of soul, achieved by suppression of "the threefold base cravings." Those who can attain this state are believed to have entered the Nirvana—not an Elysium of conscious enjoyment, but a negative state of exemption from pain.

These are the principles of esoteric Buddhism as enunciated by all the Buddhas who are made partakers of the Great Wisdom. No external troubles will disturb them, for every external phenomenon is "like a dream, like a vision, like a bubble, like shadow, like dew, like lightning." The popular illustration given by the Buddhists is that the mind is like the golden substance, and the appearance of things, as they are reflected in the mind, is like the golden image of a lion. When the image is destroyed the lion form disappears, but the golden substance is unaltered. For the time being, the existence of the lion image is true, but it is not permanent. The lion image is made with gold, but the gold could equally well make other objects, such as a tiger, or it could simply remain unaltered as a lump of gold. It is only "yuan" or chance that gives birth to one thing or another; it is only the mind which recognizes the existence of phenomena. The mind is constant; external phenomena are unsubstantial and unreal, and

vanish into nothingness. And it is just for this reason that Buddhism teaches a disregard of objective existence and an absolute quiescence of the individual.

When and how Buddhism was first introduced into China from India are matters of uncertainty. As early as 217 B.C. we read of Li Fang and eighteen monks coming to the Chinese capital. The "First Emperor" of the Ch'in dynasty (255-206 B.C.) seems to have looked upon them with suspicion and to have thrown them into prison. In 121 B.C., during the reign of Emperor Wu "the Brave" of the Han dynasty, a golden image of Buddha was brought back as booty from the Turkestan desert by the general Ho Ch'u-ping. But probably the most authentic date is 65 A.D., when Emperor Ming "the Bright" of the Later Han dynasty sent an embassy to invite Buddhists from India, and the triad of religions was completed. He is said to have been prompted to this act by a remarkable dream, in which he saw a man of gold, holding in his hand a bow and two arrows. He consulted his courtiers, who assured him that he had seen the Buddha, and expounded the dream as an intimation that Buddhism ought to be introduced. The mission, which consisted of eighteen persons, returned about 67 A.D., accompanied by two Indian Buddhists. "The White House Monastery" was the first to be established for them, and they proceeded to translate into Chinese the Sutra of Forty-two Sections.

Since its introduction into China at the beginning of the Christian era, Buddhism, in spite of much opposition and even persecution in the later dynasties, has exercised a great influence upon Chinese life and action, upon the arts, philosophy, and literature. In the Sung dynasty Buddhism permeated intellectual life perhaps more deeply and thoroughly than at any other time. This was when the Buddhist doctrines were adapted to Confucianism, and when Neo-Confucianism arose, partly religious, partly philosophical; in other words, Buddhism acted upon Confucianism and produced a highly characteristic form of Neo-Confucianism, or Li-ism.

For instance, Nirvana, according to the Buddhists, is a state of mind of stillness. But to the Confucianists, for the universe and the human mind, the greatest essential is permanent activity; thus the "Book of Changes" declares, "The movement of the heavenly bodies is constant, and the Superior Man seeks to improve himself without rest." In resolving this difference the Neo-Confucianists formed the conception of "stillness which is in constant activity, and activity which is in constant stillness." As Chou Tung-I said, "From the Non-Terminus to the Grand Terminus . . . stillness and activity are correlatives, which mutually involve one another."

And again, the Buddhists held that the visible world is an illusion, a fiction of imagination: it is unreal, empty, the Great Void. But the Confucianists favored the postulate that there is an objective world, coexisting with man's own subjective idea of it. Thus the Neo-Confucianists accepted the teaching of Buddhists that the external world is an "emptiness," a void, but insisted that it has a kind of illusory substantiality. As Chang Tai said: "The immensity of space, though called the Great Void, is not void. It is filled with chi [primordial essence]. In fact, there is no such thing as a vacuum." These philosophical conceptions will be considered at greater length in the following section.

It may be added that the Neo-Confucianists—or Li-ists—like many of the Sung artists and poets, retired from the world and gathered in study groups deep in the country. Small numbers of students would collect around some distinguished scholar and strive to elucidate "li," the "life principle," in a secluded valley enclosed by mountain peaks and elevated far above the world that they professed to despise. The development of these study groups was quite in conformity with Confucius' own practice, but the love of nature must have derived from the chief tenet of Buddhist philosophy—that all things are unreal, and human life itself a shifting phantasmagoria of empty shadows. It is for this reason that most of the Buddhist monasteries were built in gorges or on mountain peaks, where the natural solitude is as complete as the most devote hermit could desire. This sensibility

to the quietness of nature for enlightenment gives a special character to Neo-Confucianism.

Characteristics of Neo-Confucianism

"In the beginning was the Word." It seems desirable to illustrate the characteristics of Neo-Confucianism, as distinguished from Confucianism, Taoism, and Buddhism, by elucidating the philosophical conceptions of "li" and "chi," "human nature" and "mind."

THE NEO-CONFUCIANIST CONCEPTION OF "LI"

We need at the outset a satisfactory working definition of "li." Indeed, the fact that the concept of li has been misused, probably for want of an adequate definition, is responsible for many inaccurate expressions of opinion which have very much complicated the subject.

The Neo-Confucianists fixed on "li" and "chi" as the seminal principles of the universe. Each concept involves the other. Thus, in the words of Chu Hsi: "Li and chi combined, and man was born. For li in the universe is boundless, but without this chi, this li cannot exist. And for this very reason, li and chi must mutually react, and be concentrated and congealed, if this li can be attached. . . . Wherever chi is concentrated and congealed li is founded. . . . Li and chi must be two different matters. From the viewpoint of matter, they are undivided, but they are by no means the same and one."

Of the two matters, one is active, the other passive. Li, being active, has the original meaning of "the vein in jade," and the extended meaning of the "life principle." It signifies a principle of order, a law of nature, or the life force of all things. As Chu Hsi said, "The Grand Terminus is but the word li." And Cheng I said: "Mind, nature, or heaven is but li. For what comes with li is heaven; what heaven confers is nature; and what man preserves is mind." Thus li is conceived as the prime force of life in the universe. It existed before the creation of the

universe. Before the invention of house building, for instance, the principle or idea—the li—of house building existed in nature or mind. Hence this li is synonymous with “tao,” since tao is the “way of life”—the way for man’s nature to expand, for his life to be lived.

There is another passage from Chu Hsi worth inserting here for the sake of a clear conception of li: “For all things, there is a ‘mind,’ which is void; so is the mind of man. From the void evolve all principles [li] which may be extended to the whole universe. Is it for this reason that man’s mind tends to the good? Li in man’s mind is called nature; mind is the center of one’s soul and the creator of his body; and nature is derived from all these principles conferred by heaven and found in mind.”

In this sense li shades off into an idea and approaches the meaning of the Greek logos. Speaking of this li, Tai-Tung-yuan of the Ch’ing period said: “If we exclude sentiment and rely upon li, then the li is but an idea. Such an idea, if not controlled, will do harm to the people.” This shows the defect of Li-ism. Thus he ventured to attempt a definition of li: “By li we mean the maintenance of sentiment, for li cannot be secured without sentiment. . . . If sentiment is regulated with fairness, the good will be distinguished from the evil. This is what we call ‘tien-li,’ or the virtue of heaven. . . . What the mind sympathizes with is li and justice. Without sympathy one’s idea is neither li nor justice.”

This is in fact what we mean by li. But li as here conceived is different from what Neo-Confucianists conceived it to be. They were wont to identify li with heaven, nature, or mind. The Neo-Confucianists of the Sung school began by looking upon the external world, and this fact determined their conception of li as heaven or nature, for they purported to permeate Confucianism with Buddhist thought. The Neo-Confucianists of the Ming school began by looking inward upon themselves, and this fact determined their conception of li as mind, for they purported to permeate Buddhism with Confucian teaching. Notwithstanding

this difference they agreed that the "prime doctrine" or "fundamental truth" in the universe is li—somewhat like the position maintained by the Taoist philosophers, though they use tao, and not li, to express the idea.

THE NEO-CONFUCIANIST CONCEPTION OF "CHI"

"Chi," the second term of the formula, being passive, is essence. In popular use it is limited to essence in a gaseous form, but in the philosophical speculations it means primordial essence. We may examine what the Neo-Confucianists say of it.

Wang Ch'ung, who was known as a heterodox thinker in the Han period, was wont to discuss chi in connection with "reality" and "fate." In his *Lun Heng*, consisting of eighty-five essays on a variety of subjects, he said: "Heaven and earth beget all things. All things are thus produced with chi, which they contain. . . . Man is born out of the chi of yin and yang, for the chi of yin gives birth to the body, and that of yang to the soul."

His thought exercised an important influence upon Neo-Confucianism. Chou Tung-I, for instance, who was known as the author of a diagram of cosmogony, began with a ring or circle of uniform whiteness, representing "Tai Chi," or Grand Terminus; then follows a circle partly dark, which shows chi, differentiated into two static and dynamic forces, called yin and yang. "The activity of Tai Chi," he said, "begets yang, and its stillness begets yin." Thus Chou Tung-I was a monist. Speaking of this diagram, Chu Hsi said: "It shows how the grand void is transformed into matter. For Tai Chi generates yin and yang, and li produces chi. Just as yin and yang are derived from Tai Chi, so chi is produced out of li. . . . In the universe there are li and chi. Li is the way of heaven and hence it is the fundamental of all things; chi is the means of earth and hence it is the property of all things. The life of all things owes its nature to li and its reality to chi." Thus Chu Hsi was a dualist.

Further light may be thrown upon the conception of chi by a few passages from other Neo-Confucianists. Thus Chang Tai

spoke of chi in connection with "Tai Hsu," or the Great Void: "The Great Void is filled with chi; chi is concentrated into all things; and all things are in turn dissipated into the Great Void. . . . With the Great Void, chi is alternately concentrated and dissipated, much as ice is congealed or dissolved in water." This is in fact a monistic conception of chi. Also monistic is the conception of Ch'eng Hao, who held that "nature is chi, and chi is nature." He said, further: "The essence of one's being is perfect self-sufficiency; if it is not deformed, we should be in conformity with it; if it is deformed, we should reform it and maintain its original condition. The reason that we should maintain its original condition is the fact that our primordial essence is perfect and sufficient."

Thus it can be seen that the Neo-Confucianists attempted to interpret the origin and progress of life by the interaction of two forces, the yin and the yang, which are derived from chi. As Chu Hsi put it, "The two forces, yin and yang, grind back and forth, like millstones, in opposite directions, and the detritus resulting from their friction is what we call chi." But the Neo-Confucianists often spoke of divinities in connection with chi. This is the divergency marking the difference between Confucianism and Neo-Confucianism. Confucius, of course, expressly refused to speak of divinities, and taught his disciples to "keep them at a distance," asking "Until you have learned how to serve men, how can you serve the spirits?" and "If you don't understand life, how can you understand death?" It was the old moral system of Confucius, overlaid with philosophic and religious conceptions of Buddhism and Taoism, that gave rise to Neo-Confucianism, and its attempt to fix on li and chi—the life principle and the primordial essence—as the seminal principles of the universe.

THE NEO-CONFUCIANIST CONCEPTION OF "HUMAN NATURE"

As regards the broad meaning of the term "nature," the opening sentence of "The Doctrine of the Mean" offers a good illus-

tration: "That which heaven confers is called nature." And again, in the writings of Mencius, we find, "Kao Tzu said, 'That which comes with life is nature.'"

But the Neo-Confucianists tended to associate nature with chi or li. In the words of Chang Tai: "From the Great Void is heaven; from chi is the way. The Void and chi are combined to form human nature; human nature and consciousness are combined to form the mind." This thought is prominent in the writings of the Neo-Confucianists. A similar statement is to be found in the works of Ch'eng Hao: "That which comes with life is nature. Nature is chi, and chi is nature. This is what comes with life." This statement from Ch'eng Hao is distinguished from that of Kao Tzu, quoted above, by the fact that while the latter placed emphasis on life, the former laid stress on chi. In another passage Ch'eng Hao said: "Nature which is not connected with chi is imperfect. Similarly, chi which is not associated with nature is inconceivable."

Cheng I looked at human nature from the viewpoint of li. As he said in the passage that has already been quoted: "Mind, nature, or heaven is but li. For what comes with li is heaven; what heaven confers is nature; and what man preserves is mind." Since nature originates in heaven, and heaven originates in li, it is clear that nature is li."

The Neo-Confucianists' view about the meaning of nature throws light upon the development of its theory. Much controversy had arisen in the past among the followers of Confucius as to the moral quality of human nature. Tzu Sze, the grandson of Confucius, advanced a theory that human nature, as conferred by heaven, is essentially good; but Mencius was the first who distinctly enunciated the doctrine that the nature of man inclines him to goodness and kindness as surely as the nature of water compels it to flow downward. This is evident from the following dialogue, taken from the works of Mencius:

Kao Tzu said, "Human nature is like the willow, and righteousness is like a wooden bowl. To develop benevolence and right-

eousness out of human nature is like making a bowl out of the willow."

Mencius replied, "Sir, can you, following the nature of the willow, make a bowl out of it? And if you must deprive the willow of its nature in the process of making a bowl, then in like manner you would deprive man of his nature in the process of developing benevolence and righteousness. Then, such being the case, you would lead all men to regard benevolence and righteousness as evils."

Kao Tzu said, "Human nature is like rushing water. Open an outlet to the east, and it flows to the east; open an outlet to the west, and it flows to the west. For indifferent is human nature with regard to good or evil, just as water is indifferent as to the east or the west."

Mencius replied, "Water is indeed indifferent as to the east or the west, but has it no choice between up and down? Human nature inclines to good, as water does to flow down. Every man inclines to good, just as all water flows downward. By splashing water you may cause it to run over your head; and by turning its course, you may force it to run up hill; but you would not speak of such results as the nature of water. They are the results, of course, of a force majeure. And so it is when the nature of man is diverted toward evil."

In direct opposition to Mencius is the gloomy Hsun Tzu, who took the position that man is born with an evilly inclined nature. The following passage, taken from his works, contains the gist of his argument: "By nature, man is evil. If a man is good, this is an artificial result. For, his condition being what it is, he is captivated first of all by a desire for gain. Hence he strives to secure all he wants without regard to others. Next, he inclines toward envy and hate. Hence he seeks the ruin of others without regard for truth and loyalty. And lastly, he is attracted by his animal passion. Hence he commits excess, and diverges from duty and right."

The third view was held by Yang Hsiun, at about the beginning of the Christian era, who propounded an ethical criterion compromising these two opposite views. To him human nature was a *tabula rasa*, and its development depended wholly upon

environment. Thus human nature is neither good nor bad, but a mixture of the two.

In the great controversy Mencius gained the day. His tenet is expressed in the first line of "The Three Character Classic": "Man commences life with a virtuous nature." And nevertheless, in spite of this addition to the orthodox Confucian doctrine, Chinese thinkers still placed the root of evil in the heart of man.

To remove this contradiction the Neo-Confucianists devised a theory somewhat similar to Plato's account of the origin of evil. It clearly partakes of the three systems referred to above: in accordance with the first, it avers the original goodness of human nature, at the same time admitting, with the second, that it contains some elements of evil, thus synchronizing with the third, which represents it as of a mixed character.

To illustrate the goodness of human nature, the Neo-Confucianists liked to repeat the story from Mencius about a baby crawling toward the edge of a well. A man seeing this will hurry to save the child, and he will rescue the child not "in the expectation of finding favor with the parents or in looking for praise from the onlookers" (in Mencius' words). It is the prompting of *li* in his nature which causes him to act spontaneously, without thought or calculation; he acts in accordance with the goodness of his nature. The *li* was likened to the lustre of a pearl: just as a pearl grows dull when it is covered with dust, so is the inborn goodness of human nature dulled by worldly passions. Thus Chu Hsi declared, in his "Commentary on the Great Learning": "The bright principle of virtue man derives from his heavenly origin; his pure spirit, when undarkened, comprehends all truth, and is adequate to every occasion. But it is obstructed by the physical constitution and beclouded by the animal passions, so that it becomes obscure."

It is interesting to compare with this the words of Wang Yangming, who declared: "In the tranquility and equilibrium of mind there is neither good nor evil. Only with the stirring of passions does the distinction between good and evil appear. If there is

no stirring of passions there is neither good nor evil, and this is what is called the Supreme Good." And according to Chou Tung-I: "The extinction of passions is the void which is filled with purity and fairness. Purity is enlightenment, and enlightenment is comprehension. Fairness is impartiality, and impartiality is generality." His thought approaches far nearer to negation of Buddha than the Confucian idea of human nature.

THE NEO-CONFUCIANIST CONCEPTION OF "MIND"

The Neo-Confucianist conception of "stillness which is in constant activity, and activity which is in constant stillness" was applied and expanded in the doctrine of mind. There are several illustrations that the Neo-Confucianists liked to cite. The mind is like a mirror; all the varied images that fall upon its surface are unceasingly active, but the mirror remains still and is not bewildered. The mind is like the sun; the clouds pass and vanish under it, but the sun remains constant and is not affected. And the mind is like the vast surface of the sea; the waves rise and fall over it, but the general level remains calm and is not disturbed. For the mind is not outside the activity; it is in fact the mind that is active, but while it is active it remains still. This is the union of stillness and activity. This is the highest state and the best state of mind.

The following passage from the works of Wang Yang-ming is a good illustration of this state: "The mind is neither stillness as such nor activity as such. Stillness refers to its nature; activity refers to its function. This is because the learning of the superior man makes no distinction between stillness and activity. When it is still, it is always active, and hence it is different from 'nothing.' Therefore it is always responsive. When it is active, it is always still, and hence it is bewildered by nothing. Therefore it is always undisturbed. . . . Thus it remains calm and unaffected when it is still; it also remains calm and unaffected when it is active. For the mind is one and undivided. Since stillness is its nature, one who seeks another stillness in this stillness destroys

its very nature. Since activity is its function, one who fears activity destroys its function. The very idea of seeking stillness is itself activity. The very idea of avoiding activity is itself no stillness. Then the mind is in constant disturbance both in stillness and activity. The disturbance is endless."

The last sentence shows the defect of Buddhism. Referring to Buddhism, Wang Yang-ming said: "When the Buddhists speak of 'nothing,' their motive is to escape the bitterness and suffering of life and death. When they add these ideas to the original nature of mind, their original meaning of . . . 'nothing' is somewhat lost, and thereby the original nature of mind is not completely free from obscuration." He held that the real way to vanish into "nothingness" is not to make an attempt, for the attempt itself is a thing. Similarly, the real way to seek stillness is not to avoid activity, for stillness and activity cannot be separated. Just as the "nothing" is not without life, so the mind is not outside the activity.

A passage from Ch'eng Hao's treatise "On Calm" explains this state of mind more fully: "What is called calm is the calm in both activity and stillness. In this state of mind there is no anxiety about the future, no distinction between the internal and the external. . . . The universe is unchanging, because its mind is in all things, and yet of itself it has no mind. The sage is unchanging, because his feeling follows the nature of things, and yet he himself has no feeling. Hence the learning of the superior man is to keep the mind open and in response to all things. . . . Everyone has his own onesidedness and thus he misses the truth. The point is that man is often too selfish and has too much calculation. Being too selfish, he cannot take activity as activity. Having too much calculation, he cannot lean upon intuition for guidance. He has an aversion to the externals. In this state of mind he wants to enlighten the place of nothingness, just as much as he wants to seek reflections in the back of a mirror. It is better to forget both the external and the internal than to disregard the external and to regard only the internal. If both of them are

forgotten, there is nothing left. If there is nothing, there is calm. If there is calm, there is light. If there is light, is there any disturbance in the mind?" This is to show that the real "nothing"—the highest state and the best state of mind—is to be found not in the negation of activity and the external, but in the union of activity and stillness, and of the external and the internal.

The following passages from the works of Chu Hsi may be used as a summary, showing how the theory of mind is applied to human nature: "Human nature is still and passion is active, but mind is active when it is still. . . . Mind is the master of the whole person; it is neither stillness nor activity. When it is stillness, all things have not yet sprung into life and all passions have not yet come into being, but nature is perfect and righteousness is complete. Hence this is what is called the mean; for mind in its nature is stillness. When it is activity, all things spring into life and all passions are brought out. Hence this is what is called harmony; for mind in its function is activity. . . . Mind is likened to water; nature is likened to the li of water. Nature is the stillness of water; passion is the activity of water; desire is the flowing of water, and will deluge everywhere."

The General System of Neo-Confucianism

The Neo-Confucianists divided themselves into two separate schools, which may be called the scientific and the contemplative. By the Chinese the scientific school is called the Sung school of Li-ism, and the contemplative school is called the Ming school of Li-ism. These two divergent schools, differing widely in their attitudes and methods of study—the Sung school being too formal and the Ming school too subjective—exhibit nevertheless some remarkable points of agreement. They agreed in identifying the prime force in the universe with li; and each of them, in evolving from its li basis a system of philosophy, contributed its quota to popular thought.

The leader of the scientific school was Chu Hsi, a great naturalistic philosopher and a brilliant scholar, as well as a most

voluminous writer. He wrote commentaries on most of the important Confucian classics, and introduced interpretations either wholly or partly at variance with those that had been put forth by the scholars of the Han period, thus modifying to a certain extent the prevailing standard of political and social morality. In doing this he laid all previous thought under contribution. He combined the qualities of a laborious scholar and an acute thinker, and gathered the entire harvest of his predecessors. "Chu Hsi alone," it has been said, "was able to pierce through the meaning and appropriate the thought of Confucian classics." Thus there is little wonder that his interpretations were accepted by all scholars until very recent times. He held that only by a comprehensive knowledge of all the phenomena of the world can man bring his spirit—the li in his nature—into harmony with the creative spirit of heaven and earth. Knowledge is the keystone to the Life of Perfect Goodness.

The head of the contemplative school was Wang Yang-ming. Though he was in accordance with Chu Hsi on most of the fundamental principles of Li-ism, he differed on the value of knowledge and learning. While the Li-ists of the scientific school turned outward toward the universe and were occupied with research and the rational interpretation of ancient philosophy, those of the contemplative school only turned inward upon themselves and human life, and looked on study with skepticism. They believed in intuitive knowledge, and it was this section of Li-ists who were interested in quietness, serenity, calm, peace, contemplation. Thus, in outlook, they owed much to the Ch'an or Zen ("meditative") school of Buddhism, which centered around the belief that enlightenment might be achieved through stillness and contemplation, rather than through a study of the scriptures, the worship of images, or the meticulous performance of elaborate rituals.

The general system of Neo-Confucianism or Li-ism is based on the interpretation of "The Great Learning," the general principle of which is shown in the following passage:

Those ancient princes who wished to enlighten
complete virtue throughout the empire
First ruled well their own states;
In order to rule well their states,
They first regulated their own families;
In order to regulate their families,
They first cultivated their own persons;
In order to cultivate their persons,
They first rectified their hearts;
In order to rectify their hearts,
They first made their purpose sincere;
In order to make their purpose sincere,
They first extended their knowledge.
Such extension of knowledge ["chih chih"]
Depended on the study of things ["ko wu"]

The most important controversy between the two divergent schools of Neo-Confucianism may be said to center around the question whether the phrase "the study of things" (*ko wu*) should be interpreted as "to investigate things" or as "to rectify the mind"—that is, the issue between objective study and intuitive knowledge. Let us consider what both sides in the controversy said of it.

Chu Hsi's interpretation of this phrase is shown in the following passage: "The statement, 'the extension of knowledge depends on the study of things,' means that if we wish to extend our knowledge we must consider things and exhaust the *li* in them, for there is no mind without cognitive faculty, and there is no thing under heaven which does not embody the *li*. But if the *li* is not exhaustively studied, knowledge will be limited in its extension. And it is just for this reason that the teaching of 'The Great Learning' must at the outset lead scholars to study all things under heaven and, proceeding from what is already known of the *li* in these things, to study them thoroughly until ultimate reality is reached. After such efforts are put forth for a considerable time, ultimate truth will eventually be revealed. Then in all things, whether the internal or the external, the substance or the form, there will be nothing which is not penetrated, and the

mind, its nature and function, becomes enlightened. This is what is called the study of things [ko wu]. This is what is called the extension of knowledge [chih chih]."

His interpretation was based on the views of Cheng I, in whose writings the following dialogue is found: "In order to arrive at knowledge," asked one of the students, "is it necessary to study each particular object, or to grasp some one thing from which the knowledge of all things may be derived?" The Master replied: "A comprehensive knowledge of nature is very easily acquired. You must study one thing today and another thing tomorrow, and when you have accumulated a store of facts your knowledge will burst its shell and come forth into light, connecting all the particulars by general laws." This lucid response indicates that the Chinese had a clear conception of the inductive method five hundred years before Bacon.

While Chu Hsi's interpretation represented the orthodox Confucian view, it did not satisfy all scholars, and one of the prominent advocates of a different interpretation was Wang Yang-ming, who said in his *Chuan Hsi Lu*, or "Instructions for Practical Life": "The ruler of the whole person is the mind. When the mind acts, then there is an idea. The content of idea is knowledge. When there is an idea, there is an affair [wu]. For instance, if the idea is to serve one's parents, then serving the parents is an affair; if the idea is to serve one's sovereign, then serving the sovereign is an affair; if the idea is to be benevolent to the people and to be fond of things, then these are affairs; if the idea has to do with seeing, hearing, speaking, moving, then each of these is an affair. Hence it is said that there is no li outside of the mind, and that there is no affair outside of the mind. For this reason 'The Doctrine of the Mean' says that 'there is no sincerity without affairs,' and 'The Great Learning' says that the task of enlightening complete virtue depends upon sincere purpose, and the task of making the purpose sincere depends upon ko wu."

Wang Yang-ming said further: "Ko wu is to be explained by

the phrase in the works of Mencius: 'The great man may rectify the heart of his sovereign.' Here *ko* means to eradicate that which is not upright from his heart, and perfect the uprightness of his nature. But the important point is that, in order to perfect the uprightness, that which is not upright must be taken away. Thus the *li* of heaven is omnipresent and must be exhaustively studied. For the *li* of heaven is a complete virtue. To study the *li* exhaustively is to enlighten the complete virtue." And finally he concluded: "Knowledge is the original nature of the mind. . . . But the common man cannot but have some perversion of his ideas, interfering with knowledge, and accordingly rectifying affairs is necessary for the extension of knowledge."

As regards the meaning of the word "*ko*" in the context in which it is used in "The Great Learning," the interpretation of Chu Hsi seems to be preferable, and nearer to the original Confucianism. The interpretation of Wang Yang-ming is more akin to the original Buddhism. This conclusion is well presented by Hu Shih in the following passage from his *Development of Logical Method in Ancient China* (1922): "These two methods are: the theory of investigating into the reason in everything for the purpose of extending one's knowledge to the utmost, which is the method of the Sung School; and the theory of intuitive knowledge which is the method of the School of Wang Yang-ming. While fully recognizing the merits of the philosophy of Wang Yang-ming, I cannot but think that his logical theory is wholly incompatible with the spirit and procedure of science. The Sung philosophers were right in their interpretation of the doctrine of 'investigating into things.' But their logical method was rendered fruitless (1) by the lack of an experimental procedure, (2) by the failure to recognize the active and directing role played by the mind in the investigating of things, and (3), most unfortunate of all, by the construction of 'things' to mean 'affairs.' "

The Chinese word "*wu*" is well represented by the English word "things," commonly in a material sense. Thus taken literally, in the sense of "investigating material things," the phrase

"*ko wu*" suggests a basis for the development of physical science. But all Chinese scholars agreed that in the passage from "The Great Learning" the word *wu* means "affairs," for the most part, human affairs, rather than "material things." Hence the motive power of knowledge is not disinterested pursuit of truth, but only the exclusive interest of human affairs. It is not the riddle of the universe, but the riddle of human life, which makes them ponder. And it is for this reason that Chinese thinkers did not develop science, though their thought may have approached the avenues of scientific investigation.

Another controversy between the Sung school and the Ming school of Neo-Confucianism may be said to center on the question whether "knowledge precedes practice" or "knowledge is united with practice." On this issue Chu Hsi laid stress not only on the exhaustive study of *li* but also on the deliberate exercise of "prudence." His thought was based on the view of Cheng I, who said, "Action depends upon the exercise of prudence; and learning depends upon the extension of knowledge." Chu Hsi's interpretation of this passage was as follows: "The effort of the learned should center on two things: the deliberate exercise of prudence and the exhaustive study of *li*. These two things are correlatives which mutually illustrate one another. For the exhaustive study of *li* will improve the deliberate exercise of prudence, and the deliberate exercise of prudence will intensify the exhaustive study of *li*. They are like two legs: if one steps forward, the other will be left behind."

The exhaustive study of *li* relates to "knowledge," and the deliberate exercise of prudence relates to "practice." Thus knowledge and practice are also closely associated. As Chu Hsi said: "Knowledge and practice mutually involve each other. Their mutual relation can be compared to that of eyes and legs. For without legs one cannot walk, and without eyes one cannot see. In point of priority, knowledge precedes practice; in point of importance, practice predominates over knowledge." And again: "When the sages speak of knowledge, they speak of prac-

tice. When 'The Great Learning' speaks of learning, which may be compared with cutting and polishing the bone and ivory, it speaks of self-cultivation, which may be compared with cutting and polishing the stone and jade. When 'The Doctrine of the Mean' speaks of learning and thinking, it speaks of practice. When Yen Hui [Confucius' favorite disciple] speaks of broadening learning, he means the extension of knowledge and study of things; when he speaks of restricting oneself with propriety, he means self-control and conformity with propriety."

But Chu Hsi laid special stress on knowledge, for he said: "All things come into existence only after li has been exhaustively studied. If the virtue is not rectified, and if li is not enlightened, how can there be anything substantial? For all is but empty." Hence Chu Hsi held the principle that knowledge precedes practice, and that li must be exhaustively studied before prudence can be exercised. This is the scientific spirit of Chu Hsi.

Wang Yang-ming, on the other hand, held a principle of unity of knowledge and practice: "What one likes is beautiful color, and what one dislikes is offensive odor. To see beautiful color is akin to knowledge, and to like it is akin to practice. . . . For merely to see beautiful color does not mean really to like it. Similarly, to smell offensive odor is akin to knowledge, and to dislike it is akin to practice. . . . For merely to smell offensive odor does not mean really to dislike it. For instance, if one holds his nose tightly he does not smell; it is as if he is devoid of consciousness, even though there is in fact offensive odor. By parity of reasoning, if one is said to be filial or fraternal, he must practice filiality or fraternity before he can be said to know it. For if he merely speaks of filiality or fraternity, he cannot be said to know it. And again, if one is in pain, he must feel pain; if one is cold, he must feel cold; and if one is hungry, he must feel hunger." And in another passage he said: "Knowledge is the purpose of practice, and practice is the exercise of knowledge. Similarly, knowledge is the beginning of practice, and practice is the end of knowledge. . . . That which puts knowledge into

actual performance is called practice. That which perceives practice with clear comprehension is called knowledge. Thus knowledge and practice are one and undivided."

This is the doctrine of unity of knowledge and practice. In original nature, according to Wang Yang-ming, all is unity. Man lost this unity in the false distinction of things. The method of restoration of the original nature is "enlightenment of the mind." In his "Dialogue on the Great Learning" he said: "The Great Man is an all-pervading unity, one with heaven, earth, and all things. . . . The small man makes a cleavage between things, and distinguishes between himself and others. The reason that the Great Man can be one with heaven, earth, and all things is not that he makes himself to be, but that the nature of his mind is so. The mind of the small man is just the same, only he makes it small. The small man sees the child about to fall into the well; he certainly will experience a feeling of alarm and distress. This shows that his benevolence is one with the child. . . . When he hears the pitiful cry and sees the frightened appearance of the birds and beasts that are about to be killed, he certainly will experience a feeling of pain and grief. This shows that his benevolence is one with the birds and the beasts. . . . Hence the original unity is also in the small man. This nature of mind has its source in nature, and its brightness cannot be obscured. Therefore it is called the complete virtue."

Conclusion

Practical and ethical as the Chinese mind assuredly is, it is not a little remarkable that objective study made no impression on it, while intuitive knowledge was generally regarded as its guiding star. Chinese history would surely have been very different if the Chinese thinkers, instead of believing that they might arrive at the "source of all things," had been content to study "one thing today and another thing tomorrow," with a view to "connecting all the particulars by general laws."

In any event, Neo-Confucianism is one of the greatest philoso-

phies that China has ever seen, or is ever likely to see. It became seized with a mania for philosophical speculation, and grappled with deepest questions of ontology. The intellectual influences that had acted upon China in the past, the culture and thought that had been brought from lands far beyond the borders of China, permeate this body of thought, and are crystallized within it. If it does not solve all problems, it does render the world more intelligible to the Chinese than it was before.

And again, Neo-Confucianism gives the Chinese a kind of ideal life, and also tells them the way to attain it. Whether its method is practicable, whether its doctrine is sound, are questions still to be answered. But its literature must amply repay study.

BOOK REVIEWS

SCOTT, FRANKLIN D. *The United States and Scandinavia*. Cambridge: Harvard University Press. 1950. xviii & 359 pp. \$4.

This recent addition to the American Foreign Policy Library, edited by Professor Donald C. McKay of Harvard University and former Under-Secretary of State Sumner Welles, represents an important contribution to the series. In two focal chapters, "Functioning Social Democracy" and "The Twentieth Century Economy," Dr. Scott provides a vivid and colorful account of the economic, political, and social institutions of Denmark, Finland, Iceland, Norway, and Sweden, and performs successfully the difficult task of giving a coherent and comprehensive picture of these diverse northern countries.

There is much of value for both the social and political scientist to be gleaned from this report of Scandinavian experience. With the freedom and welfare of the individual as their common goal, the Scandinavian countries have attempted, and not in vain, "to keep the society subordinate to the person" (p. 89). Advanced legislation in housing, education, and health services is the general rule, and arbitration of labor disputes is taken for granted. The problems of strikes, social security, unemployment benefits, and the like have also been faced, and the measures taken to solve them are decidedly relevant to present-day American concerns. And as good examples of the operation of a democratic system in environments quite different from those prevailing in Great Britain and the United States, the northern countries have demonstrated that the multiple party system may under certain conditions be successfully employed without frequent change in government.

For the lay reader, great interest will attach to the last three chapters of the book, some hundred pages recording what happened in Scandinavia between the two world wars, and presenting a thoughtful analysis of postwar problems. Dr. Scott recognizes the strategic position of Scandinavia in any future war, and points out that though these countries are threatened by a common danger, they have not taken appropriate steps to forestall it collectively. Alone and separately they cannot hope to defend themselves. In 1949, Sweden offered to abandon her traditional neutrality in favor of a Scandinavian Defense Pact on condition that none of the Scandinavian countries would join the Atlantic Pact, but the scheme failed. Denmark and Norway are signatories of the Atlantic Pact and Sweden remains aloof. Dr. Scott might well have mentioned one of the main reasons for the

breakdown, which has been overlooked, deliberately or otherwise, by most of the discussion on the subject: Sweden refused to include Svalbard, which is under Norwegian sovereignty, in the proposed arrangement.

The occurrence of occasional errors in the text might also be noted. Dr. Scott mentions that the so-called Kensington Rune Stone (1362) was brought to northern Minnesota by members of the Paul Knutson expedition which sailed from Norway in 1355 (p. 24). The weight of authority pronounces this stone a falsification. In the chapter, "The Search for Security," Dr. Scott says that in 1940 "the British mining of Norwegian waters almost led to war between Norway and Britain" (p. 312). There is abundant documentation to prove that at no time was there any danger that Norway would fight against Great Britain. The Norwegian Storting would never have consented to such an imprudent act. Furthermore, there is no foundation in fact for the story that the Norwegian Foreign Minister, Halvdan Koht, "asked his friend the German Minister, Dr. Kurt Bräuer" about the imminent German invasion (p. 239).

In the tense and uneasy world situation that prevails today it is gratifying to realize that the United States and Scandinavia have a solid basis for mutual understanding in their common interest in upholding democratic traditions and self-government. Dr. Scott is to be highly commended for strengthening this understanding by clarifying and interpreting the problems of Scandinavia for American readers.

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GRENE, DAVID. *Man in his Pride: A Study in the Political Philosophy of Thucydides and Plato*. Chicago: University of Chicago Press. 1950. 231 pp. \$4.

It is extremely difficult to give an adequate notion of this book. The author combines the specific sensitivities of both the historian of culture and the artist with a distrust, not to say contempt, of what is generally known as philosophy. His book vibrates with that "passionate sense of life" which, he feels, contended in Plato's soul with an equally "passionate belief" in ideas. Partly inspired by what Plato suggested about the essential weakness of reasoning and the superiority of indirect communication to direct communication, Grene senses most strongly, deplores most passionately, and avoids most carefully, the pitfalls into which an unbridled concern with conceptual pre-

cision and methodic procedure might lead. He is more concerned with bringing to light and to life the hidden drama of the souls of Thucydides and Plato, or the human reality of fifth-century Athens as reflected in Thucydides' and Plato's minds, than with articulating their political philosophies proper, that is, their reasoned views of the nature of political things and the right social order. He thus makes his readers see many things in Thucydides and Plato which would escape the large majority of those whose profession it is to teach philosophy. With gratifying candor he takes the responsibility for his basic premise by using the terms "political philosophy" and "political opinions" or "political beliefs" synonymously.

The book may be said, if not to prove, at any rate to suggest the following thesis. Political philosophy emerged in fifth-century Athens, in a society that was particularly close to our own: both then and now "it is man and man alone, without cosmic or supernatural sanction, who is both the source and the resolution of conflict." In the extreme situation in which man lived in fifth-century Athens, Thucydides and Plato "defined the range within which . . . all political speculation in the West can be seen to move." This would seem to mean that the two classics of political philosophy are opposed to each other; Grene uses the word "polarity." By implication he rejects the accepted view, which may be stated as holding that the Sophists (and not Thucydides) stand at the opposite pole to Plato; and that modern political philosophy has transcended the limits within which all classic political philosophy remained. One might wish that the author had shown why the political teachings of Thucydides and Plato can be said to mark "the limits within which, in its view of political man, our Western tradition has developed." But one could say in defense of Grene's reserve that we are barely beginning to discern the region in which the answer to questions of this kind, nay the proper formulation of questions of this kind, has to be sought.

Grene notes a kinship between Thucydides' opinions and those that Plato attributed to Thrasymachus and Callicles: he speaks of Thucydides' "Materialism." But, he adds, Thucydides "may have seen [in certain phenomena] the transcendence of the materialism in which he believed." The phenomena in question are apparently not what one could call the moral phenomena. It is true that Thucydides believed "in the meaningfulness of moral epithets," or he believed that "the old values [decency and nobility] . . . had existed and did in some sense exist, even if human beings no longer paid them their former homage"; but he did not believe "in the actual existence of a

genuine power in the moral issues themselves." The phenomenon in which Thucydides "may have seen the transcendence of the materialism in which he believed" was Periclean Athens, or, in general terms, "the great state," which lives "in the radiance of its own beauty and magnitude," which is an end in itself, whose preservation "means more than the happiness or misery of all her inhabitants," and in whose image "the blackest deeds against Greek morality have their place as truly as the love of beauty and wisdom." This solution is based on a number of assumptions, one of them being that the taste of Thucydides was identical with the taste of Pericles. For reasons that I cannot set forth here, I believe that the true solution would require extensive and coherent reflection about what Thucydides indicates in regard to the virtue of moderation. It would require, above all, methodic reflection about that great virtue itself. The fact that Thucydides did not believe in supernatural sanctions does not prove that he was unaware of the "cosmic" or natural sanctions to immoderate courses.

As for Grene's account of Plato's political philosophy, one cannot even attempt to summarize it. Two points in it strike me most. In the first place, Grene, who is keenly aware of the connection between politics and rhetoric on the one hand, and between rhetoric and *eros* on the other, appears to trace the basic difficulty inherent in Plato's political philosophy to the disproportion between the political relationship (that of rulers and ruled) and the "erotic" relationship. I regard this as an important insight. I only wish that it were not blurred by the identification of true rhetoric (the rhetoric adumbrated in the *Phaedrus*) with the art that Plato employed in writing the preambles to laws (in the *Laws*). Secondly, Grene seems to believe that there is in Plato's political philosophy an "inevitable antithesis" between the philosopher and the king, an antithesis that seems to be traceable to the tension between Plato's admiration for "Socrates, the rebel" and his admiration for a "rigid and stratified" or "ritualistic" society. If I am not mistaken, Grene is here again guided by an important insight, and in fact by the same insight as the one referred to before. Yet, to say nothing of other considerations, one cannot accept his contention that according to the *Laws*, and apparently even according to the *Republic*, "in the imitation of the eternal model . . . it is not essential that from moment to moment or generation to generation even the ruler . . . should understand the truth which underlies the organization of the best or second best state." It would be difficult to reconcile this contention with what Plato says about

the Nocturnal Council. But today it is perhaps better thus to overstate Plato's thesis regarding the disproportion between philosophy and politics than to follow the beaten path by failing to see a problem in the relation between philosophy and politics.

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KAUFMANN, WALTER A. *Nietzsche: Philosopher, Psychologist, Antichrist*. Princeton: Princeton University Press. 1950. xi & 409 pp. \$6.

Mr. Kaufmann's study aims at a comprehensive reconstruction of Nietzsche's thought, with occasional references to the great tradition of Western philosophy from Plato to Hegel. This attempt is a healthy antidote to the narrow and polemical presentations of Nietzsche, though often the author's zest leads him too far in the opposite direction. He is thoroughly familiar with the whole material (published works, posthumous writings, and letters)—of which only a small part is available in English, in a poor translation—and discriminating with regard to the vast German and French literature on Nietzsche. It is regrettable that he did not include references to the criticism of modern humanity and civilization by men like Henry Adams, D. H. Lawrence, and T. E. Lawrence. Few people realize that "The Man Who Died," by D. H. Lawrence, is the only English counterpart to Nietzsche's *Antichrist*.

The author believes in the validity of philosophical principles and experience only in so far as they are derived from "empirical induction" without examination of its philosophical implications. Consequently he reduces Nietzsche's metaphysical experience and thought to a common level, and finds the focus of his philosophy in the psychological concepts of "sublimation," "self-perfection," and "self-overcoming." Within this limitation he avoids, however, the danger of biographical and sociological trivialization. Like G. A. Morgan's more descriptive analysis of "What Nietzsche Means," this book is a substantial guide for the student of Nietzsche's fragmentary production. Its main themes are Nietzsche's "experimental" method; the "Death of God" and the "Will to Power" as a revaluation of all values; morality and sublimation; Superman and Eternal Recurrence; Nietzsche's interpretation of Christ and Christianity; and his attitude toward Socrates.

Mr. Kaufmann is certainly right when he stresses the essential continuity of Nietzsche's thought, but one may question whether the

undeniable inconsistencies within this deeper unity can be explained away so easily. While he seems to succeed in his attempt to reconcile the Superman with the doctrine of Eternal Recurrence, and both with the Will to Power, he does so at the price of reducing Nietzsche's metaphysical teachings to objectified projections of Zarathustra's self-overcoming, and the philosopher Nietzsche to an educator. But the fundamental motif of "eternity" which pervades Nietzsche's whole philosophy cannot be reduced to a "supra-historical outlook," and the key to Nietzsche's philosophy is not the human effort toward self-overcoming but the "will to be willing" the necessity of a cosmic destiny "beyond man and time." The continuity of Nietzsche's work lies on its metaphysical level; in his latest writings he fulfilled the intentions of an early essay on "Truth and Falsehood in a Transmoral Sense," and of an early sketch which posited, twenty years before Zarathustra, the alternative of deciding either for the Christian God or for the "ring of the world."

In the concluding chapter the author challenges the traditional view that Nietzsche discriminated sharply between Socratic and pre-Socratic philosophy, in favor of the latter. To support his thesis that Nietzsche tried to recapture more than anything else the ironic spirit of Socrates, Mr. Kaufmann does not hesitate to relate the desperate buffoonery of the latest Nietzsche to the ironical charm of Socrates, and to call Nietzsche's *Ecce Homo* his "Apology." He seems blind to the radical difference between the ultramodern experimentalism of Nietzsche and the ceaseless questioning of classical Socrates. "Intellectual honesty," "openmindedness," and an "unsystematic spirit" do not unqualifiedly constitute a common denominator for Socrates and Nietzsche.

There are several other instances in the book which betray a strange lack of sense of proportion. We are told (p. 64) that Nietzsche did not want to be less "scientific" than Hegel, but more so, although he had in mind the "gay science" of fearless experiment—as if Hegel's metaphysical notion of *Wissenschaft* could be compared at all with Nietzsche's dependence on positive science and rebellion against it. Another unfortunate comparison is that of Nietzsche's *Birth of Tragedy* with Hegel's *Phenomenology* (p. 343), on the ground that both are "dialectical" conceptions written during a war.

Since the publication of this book several significant interpretations of Nietzsche have appeared in Germany (by L. Giesz, W. Struve, M. Heidegger). These may stimulate a critical reinterpretation of Nietzsche's metaphysics in the light of the European tradition.

KARL LÖWITH

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